

UNITED STATES DISTRICT COURT

District of

Connecticut

Governor, M. Jodi Rell, in her official capacity as Governor of the State of Connecticut, the State of Connecticut, Christopher J. Dodd and Joseph I. Lieberman in their official capacities as United States Senators and John B. Larson in his official capacity as United States Representative,

V.

SUMMONS IN A CIVIL CASE

Donald Rumsfeld, in his official capacity as Secretary of Defense, The Defense Base Closure and Realignment Commission, and Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, in their official capacities as members of the Defense Base Closure and Realignment Commission, Defendants

CASE NUMBER: #

305CV1389 AVC

TO: (Name and address of Defendant)

2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

ATTEST:
A TRUE COPY

Nancy F. Marino
NANCY F. MARINO
CONNECTICUT MARSHAL
HARTFORD COUNTY

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEVIN F. ROWE

CLERK

DATE

8/29/05

DEPUTY CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CT 06510
(203) 773-2140

450 MAIN STREET
HARTFORD, CT 06103
(860) 240-3200

915 LAFAYETTE BLVD
BRIDGEPORT, CT 06604
(203) 579-5861

14 COTTAGE PLACE
WATERBURY, CT 06702
(203) 597-6311

NOTICE TO COUNSEL AND PRO SE PARTIES

THE ATTACHED CASE HAS BEEN ASSIGNED TO JUDGE ALFRED V. COVELLO WHO SITS IN HARTFORD. COUNSEL AND PRO SE PARTIES SHOULD FILE ALL FUTURE PLEADINGS OR DOCUMENTS IN THIS MATTER WITH THE CLERK'S OFFICE IN HARTFORD. ANY ATTEMPT TO FILE PLEADINGS OR OTHER DOCUMENTS RELATED TO THIS ACTION IN ANY OF THE OTHER SEATS OF COURT WILL RESULT IN THOSE PLEADINGS OR DOCUMENTS BEING REFUSED AT THE COURT OR BEING RETURNED TO YOUR OFFICE. SEE D.CONN. L. CIV. R. 3(a).

COUNSEL AND PRO SE PARTIES ARE REQUIRED TO BECOME FAMILIAR WITH AND ABIDE BY THE FEDERAL RULES OF CIVIL PROCEDURE, THE LOCAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT OF CONNECTICUT AND STANDING ORDERS REGARDING SCHEDULING IN CIVIL CASES AND THE FILING OF TRIAL MEMORANDA.

COUNSEL AND PRO SE PARTIES ARE HEREBY NOTIFIED THAT FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION, WITHIN 21 DAYS AFTER THE MOTION IS FILED, MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION. FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION TO DISMISS WITHIN 21 DAYS AFTER THE MOTION IS FILED MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION, EXCEPT WHERE THE PLEADINGS PROVIDE SUFFICIENT GROUNDS TO DENY THE MOTION. SEE D.CONN. L. CIV. R. 7(a)1

COUNSEL AND PRO SE PARTIES ARE FURTHER NOTIFIED THAT THEY ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATING TO MOTIONS FOR SUMMARY JUDGMENT AS SET FORTH IN FED. R. CIV. P. 56 AND D.CONN. L. CIV. R. 56. A PARTY MAY MOVE FOR SUMMARY JUDGMENT WHEN THAT PARTY BELIEVES THERE IS NO GENUINE ISSUE OF MATERIAL FACT REQUIRING TRIAL AND THE PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. THE MOTION MAY BE DIRECTED TOWARD ALL OR PART OF A CLAIM OR DEFENSE AND IT MAY BE MADE ON THE BASIS OF THE PLEADINGS OR OTHER PORTIONS OF THE RECORD IN THE CASE OR IT MAY BE SUPPORTED BY AFFIDAVITS AND OTHER MATERIALS OUTSIDE THE PLEADINGS.

WHEN A PARTY SEEKING SUMMARY JUDGMENT (THE "MOVING PARTY") FILES A SUPPORTING AFFIDAVIT, THE PARTY OPPOSING SUMMARY JUDGMENT MUST FILE AN AFFIDAVIT, OR OTHER DOCUMENTARY EVIDENCE, CONTRADICTING THE MOVING PARTY'S SUBMISSIONS TO DEMONSTRATE THAT THERE ARE FACTUAL ISSUES REQUIRING A TRIAL. FACTS ASSERTED IN THE AFFIDAVIT(S) OF THE MOVING PARTY WILL BE TAKEN AS TRUE IF NOT CONTROVERTED BY COUNTER-AFFIDAVITS OR OTHER DOCUMENTARY EVIDENCE.

LOCAL CIVIL RULE 56(a) REQUIRES THE PARTY SEEKING SUMMARY JUDGMENT TO FILE A DOCUMENT ENTITLED "LOCAL RULE 56(a)1 STATEMENT," WHICH SETS FORTH IN SEPARATELY NUMBERED PARAGRAPHS A CONCISE STATEMENT OF EACH MATERIAL FACT AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED. THE MATERIAL FACTS SET FORTH IN THIS STATEMENT SHALL BE DEEMED ADMITTED UNLESS CONTROVERTED BY THE "LOCAL RULE 56(a)2 STATEMENT" REQUIRED TO BE SERVED BY THE OPPOSING PARTY. THE PARAGRAPHS IN THE 56(a)2 STATEMENT SHALL CORRESPOND TO THE PARAGRAPHS IN THE 56(a)1 STATEMENT AND SHALL STATE WHETHER THE FACTS ASSERTED BY THE MOVING PARTY ARE ADMITTED OR DENIED. THE LOCAL RULE 56(a)2 STATEMENT MUST ALSO INCLUDE IN A SEPARATE SECTION A LIST OF EACH ISSUE OF MATERIAL FACT AS TO WHICH IT IS CONTENDED THERE IS A GENUINE ISSUE TO BE TRIED.

COUNSEL AND PRO SE PARTIES ARE ALERTED TO THE REQUIREMENTS OF FED. R. CIV. P. 26(f) AND LOCAL CIVIL RULE 26, WHICH REQUIRE THAT THE PARTIES CONDUCT A CASE MANAGEMENT PLANNING CONFERENCE AND PREPARE AND FILE A REPORT OF THE CONFERENCE ON FORM 26(f) WHICH APPEARS IN THE APPENDIX TO THE LOCAL RULES.

COUNSEL AND PRO SE PARTIES ARE FURTHER ADVISED THAT THEY MAY REQUEST A REFERRAL OF THEIR CASE TO A UNITED STATES MAGISTRATE JUDGE FOR DISPOSITION. SEE 28 U.S.C. 636 AND RULE 77.2 OF THE LOCAL RULES FOR UNITED STATES MAGISTRATE JUDGES.

KEVIN F. ROWE, CLERK

305CV1363-LWC
FILED

UNITED STATES DISTRICT COURT 2005 AUG 29 P 1:06
DISTRICT OF CONNECTICUT

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(e), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R. Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(e) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
Kevin F. Rowe, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 1/2/03)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ORDER RE: DISCLOSURE STATEMENT

ANY NONGOVERNMENTAL CORPORATE PARTY TO AN ACTION IN THIS COURT SHALL FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK. A PARTY SHALL FILE THE STATEMENT WITH ITS INITIAL PLEADING FILED IN THE COURT AND SHALL SUPPLEMENT THE STATEMENT WITHIN A REASONABLE TIME OF ANY CHANGE IN THE INFORMATION. COUNSEL SHALL APPEND A CERTIFICATE OF SERVICE TO THE STATEMENT IN COMPLIANCE WITH LOCAL RULE 5(b).

COUNSEL FOR PLAINTIFF OR REMOVING DEFENDANT SHALL BE RESPONSIBLE FOR SERVING A COPY OF THIS ORDER UPON ALL PARTIES TO THE ACTION.

BY ORDER OF THE COURT
KEVIN F. ROWE, CLERK

Revised 1/2/03

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE TO COUNSEL
FOR CASES REMOVED FROM SUPERIOR COURT

STANDING ORDER

All parties removing actions to this Court pursuant to 28 U.S.C. §1441 shall, no later than five (5) days after filing a notice of removal, file and serve a signed statement that sets forth the following information:

1. The date on which each defendant first received a copy of the summons and complaint in the state court action.
2. The date on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the dates set forth in item 1.
3. In diversity cases, whether any defendant who has been served is a citizen of Connecticut.
4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal has taken place at this time.
5. The name of any defendant served prior to the filing of the notice of removal who has not formally joined in the notice of removal and the reasons why any such defendant did not join in the notice of removal.

At the time a removal notice is filed with the Clerk of this Court, the removing party shall also file with the Clerk a separate notice, entitled "Notice of Pending Motions," specifying any pending motions that require action by a Judge of this Court and attaching a true and complete copy of each such motion and all supporting and opposition papers.

The removing party shall list in its certificate of service immediately below the name and address of counsel the name of the party or parties represented by said counsel and all parties appearing pro se.

NOTICE TO COUNSEL RE LOCAL RULE 5(a)

To ensure that our records are complete and to ensure that you receive notice of hearings and any court rulings, PLEASE FILE AN APPEARANCE with this office in accordance with Local Rule 5(a) of the Local Rules of Civil Procedure for the District of Connecticut.

NOTICE RE PLANNING CONFERENCE AND REPORT

Pursuant to Fed. R. Civ. P. 26 and Local Civil Rule 26(e) counsel and pro se parties must conduct a case management conference within 30 days of the appearance of the opposing party and must jointly file a planning conference report within 10 days thereafter using Form 26(f), which appears in the Appendix to the Local Rules.

Counsel for the removing defendant(s) is responsible for immediately serving a copy of this notice on all counsel of record and all unrepresented parties at their last known address.

KEVIN F. ROWE
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GOVERNOR M. JODI RELL, in her
official capacity as Governor of the
State of Connecticut, CHRISTOPHER
J. DODD, in his official capacity as
United States Senator, JOSEPH I.
LIEBERMAN in his official capacity as
United States Senator, JOHN B.
LARSON, in his official capacity as
United States Representative, and
STATE OF CONNECTICUT,
Plaintiffs,

v.

DONALD RUMSFELD,
in his official capacity as
Secretary of Defense,
THE DEFENSE BASE CLOSURE
AND REALIGNMENT COMMISSION,
and ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the
the Defense Base Closure and
Realignment and Commission, and
JAMES H. BILBRAY, PHILIP COYLE,
HAROLD W. GEHMAN, JR.,
JAMES V. VINSON, JAMES T. HILL,
LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER,
in their official capacities as members
of the Defense Base Closure and
Realignment Commission,
Defendants.

CIVIL ACTION NO.

05 CV 1368

AVC

2005 AUG 29 P 12:51

FILED

August 29, 2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff State of Connecticut has a fundamental, long-standing duty to ensure the security of its citizens, including through the maintenance of a state militia.

The State's right to maintain and direct its own militia is deeply rooted in both the U.S. Constitution and its State Constitution. See U.S. Constitution Article I, Section 8, clauses 15 & 16 and Connecticut Constitution, Article Fourth, sec. 8.

2. The National Guard system is the successor to the original state militias. The National Guard and Air National Guard are dual federal and state organizations, with dual enlistments, whereby the National Guard military personnel swear allegiance to both the federal and state governments, and are simultaneously enlisted or commissioned with both the state and federal governments.

3. The plaintiff, M. Jodi Rell, Governor of the State of Connecticut, is the "captain general of the militia of the state, except when called into the service of the United States." See Connecticut Constitution, Article Fourth, sec. 8. As "commander-in-chief" of both the National Guard and Air National Guard in Connecticut, Governor Rell directs the National Guard and Air National Guard unless the Guard units are called into active federal military service. See Conn. Gen. Stat. § 27-14.

4. Plaintiff Christopher J. Dodd is a duly elected United States Senator for the State of Connecticut.

5. Plaintiff Joseph I. Lieberman is a duly elected United States Senator for the State of Connecticut.

6. Plaintiff John B. Larson is a duly elected United States Representative for the First Congressional District of Connecticut. The First Congressional District encompasses the town of Windsor Locks, Connecticut, in which the Bradley Air National Guard Station is located.

7. A unit of the Connecticut National Guard or Air National Guard may not be relocated or withdrawn without the consent of Governor Rell. See 10 U.S.C. § 18238.

8. No change in the branch, organization, or allotment of a National Guard or Air National Guard unit located entirely within a state may be made without the approval of its governor. See 32 U.S.C. § 104.

9. Defendant Secretary Donald Rumsfeld (the "Secretary" or "Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense ("DOD"). Secretary Rumsfeld is sued in his official capacity.

10. The Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (the "BRAC Act"), sets forth the process by which military bases in the United States and its territories are identified for closure or realignment.

11. Pursuant to the BRAC Act, as amended, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the defendant Defense Base Closure and Realignment Commission (the "BRAC Commission").

12. Defendant Anthony J. Principi is the Chairman of the BRAC Commission. Chairman Principi is sued in his official capacity.

13. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

14. Secretary Rumsfeld is responsible for overseeing, directing and/or implementing the closure or realignment of military bases pursuant to the BRAC process.

15. On or about May 13, 2005, Secretary Rumsfeld transmitted the DOD Base Closure and Realignment Report ("DOD Report") to the BRAC Commission.

16. The DOD Report contains the DOD's recommendations to realign or close military installations within the United States and its territories.

17. The DOD Report recommends the realignment of the Connecticut 103rd Fighter Wing located at Bradley Air National Guard Station in Windsor Locks, Connecticut. In particular, the Secretary has recommended that "[t]he A-10s assigned to the 103d Fighter Wing will be distributed to the 104th Fighter Wing, Barnes Municipal Airport Air Guard Station, MA (nine aircraft) and retirement (six aircraft)," and realigning the flying unit into the Massachusetts Air Guard. See DOD Recommendations, Sec. 3 (Air Force) at 14.

18. On August 26, 2005, the BRAC Commission adopted and approved the DOD's recommendation to realign the 103rd Fighter Wing.

19. The decision to adopt the DOD's recommendation to realign the 103rd Fighter Wing is not subject to any further review by the BRAC Commission and becomes part of its final report and recommendations to be transmitted to the President of the United States by September 8, 2005.

20. Pursuant to the BRAC Act, the President of the United States must approve or disapprove the BRAC Commission's recommendations in their entirety. He

may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing.

21. In each of the four previous BRAC processes – occurring in 1988, 1991, 1993 and 1995 – the President approved the BRAC Commission's recommendations in their entirety.

22. The President has stated publicly that he will approve the BRAC Commission's recommendations in their entirety and forward them to Congress.

23. The deadline for the President to forward to the Congress his approval of the BRAC Commission's recommendations is September 23, 2005. Congress's authority is limited to disapproving the entire slate of closures and realignments. Congress may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing. If Congress does not affirmatively act to disapprove the recommendations in their entirety within 45 legislative days of their transmittal from the President, they become law. Thereafter, Secretary Rumsfeld would be responsible for implementing all final closure and realignment decisions.

24. Congress has never disapproved the President's base closure and realignment decisions.

25. The 103rd Fighter Wing is an operational flying National Guard Unit located entirely within the State of Connecticut and is not currently activated to federal service. Initially formed in 1917, the 103rd Fighter Wing, also known as the "Flying Yankees," is made up the 103rd Operations Group, 103rd Mission Support Group, 103rd Maintenance Group and the 103rd Medical Group. Within each group are squadrons

and flights that come together to make up the more than 900 men and women of the 103rd Fighter Wing.

26. Transferring and/or retiring all of the 103rd Fighter Wing's aircraft would eliminate Connecticut's only Air National Guard fighter squadron. Transfer of these aircraft out of Connecticut would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command.

27. According to published reports, the Secretary's and BRAC Commission's recommendations would leave Connecticut as one of only two states without a single Air National Guard aircraft assigned within its borders.

28. The elimination of Connecticut's only Air National Guard Fighter Wing would have an immediate negative affect on enlistment and reenlistment in the Air National Guard in Connecticut.

29. The 103rd Fighter Wing is one of the world's premier A-10 flying units. Its members have demonstrated their excellence during missions over Bosnia and Iraq, including in Operation Iraqi Freedom, Operation Southern Watch and Operation Deny Flight.

30. The 103rd Fighter Wing is not activated to federal service. Thus, the 103rd Fighter Wing is under the command of the Governor of Connecticut. Responding to state or community emergencies is co-equal, and in no way subordinate, to the 103rd Fighter wing's federal responsibilities.

31. The proposed realignment of the 103rd Fighter Wing is a change in the branch, organization or allotment of the unit.

32. The proposed realignment of the 103rd Fighter Wing is a relocation or withdrawal of a unit of the Air National Guard.

33. In recommending the realignment of the 103rd Fighter Wing, the BRAC Commission contravened the law and the legal advice of its own counsel. By memorandum dated July 14, 2005, legal counsel to the BRAC Commission correctly recognized that the BRAC Act did not authorize the DOD or its Secretary to change the organization of or withdraw or disband a National Guard unit unless the DOD obtained the consent of the governor where the unit was located. In particular, the BRAC Commission's staff's legal analysis, which was approved by its General Counsel, concluded that

[w]here the practical result of an Air Force Recommendation would be to withdraw, disband, or change the organization of an Air National Guard Unit, the Commission may not approve such a recommendation without the consent of the Governor Concerned.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 15.

34. The recommendations by the BRAC Commission and Secretary Rumsfeld to transfer and/or retire aircraft currently assigned to the Bradley Air Guard Unit are also unlawful in that they call for action beyond the Commission's authority as delineated by the BRAC Act. The BRAC Commission's legal staff concluded that:

The Base Closure Act does not grant the Commission the authority to change how a unit is equipped or organized. Recommendations that

serve primarily to transfer aircraft from one unit to another, to retire aircraft, or to address an imbalance in the active-reserve force mix are outside the authority granted by the Act. The Commission must act to remove such provisions from its recommendations.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 10.

35. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to change the branch, organization or allotment of the 103rd Fighter Wing, or any portion thereof.

36. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to relocate or withdraw the 103rd Fighter Wing or any portion thereof.

37. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to deactivate the 103rd Fighter Wing or any portion thereof.

38. In her letter of June 14, 2005, Governor Rell informed the Secretary that she does not consent to the realignment, relocation, withdrawal, deactivation or change in the branch, organization or allotment of the 103rd Fighter Wing.

JURISDICTION

39. This is a lawsuit for declaratory and injunctive relief based upon 10 U.S.C. § 18238 and 32 U.S.C. § 104.

40. Pursuant to 28 U.S.C. §§ 1331, 1346, 2201, and 2202, this Court has jurisdiction over the parties and claims in this lawsuit.

41. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

42. Pursuant to the process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of realignments and closures of military installations. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

43. The BRAC Commission voted on August 26, 2005 to accept the Secretary's recommendation with regard to the 103rd Fighter Wing. The BRAC Commission is preparing to transmit this and its other recommendations to the President on or before September 8, 2005.

44. By voting to eliminate the 103rd Fighter Wing and transmit this recommendation to the President, the BRAC Commission, Chairman Principi and the BRAC Commissioners have finally and completely fulfilled their responsibilities under the BRAC Act with respect to the 103rd Fighter Wing. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

45. The harm as detailed herein is neither speculative nor conjectural, but rather is already complete as the Governor's right to disapprove changes to the branch, organization or allotment of the 103rd Fighter Wing has been nullified by the Secretary's and BRAC Commission's recommendations.

46. Additional harm is imminent as neither the President nor Congress may remove the 103rd Fighter Wing from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. The President has stated publicly that he will accept the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them and the President must act by September 23, 2005.

IRREPARABLE HARM

47. Absent a preliminary injunction, the harm as alleged herein would be irreparable. In addition to nullifying the Governor's right to disapprove changes to the organization or allotment of Connecticut's Air National Guard, the Secretary's and BRAC Commission's recommendation would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command. The proposed elimination of Connecticut's only Air National Guard Fighter Wing would immediately and negatively affect

enlistments and reenlistments in Connecticut's Air National Guard. In addition, once the BRAC Commission transmits its recommendations to the President, the ability to obtain effective judicial relief is severely diminished or eliminated.

FIRST CAUSE OF ACTION
[Declaratory and Injunctive Relief]

48. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

49. Pursuant to 32 U.S.C. § 104, no change in the branch, organization or allotment of a National Guard Unit located entirely within a State may be made without the approval of that State's Governor.

50. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut.

51. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

52. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

53. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

SECOND CAUSE OF ACTION
[Declaratory and Injunctive Relief]

54. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

55. Pursuant to 10 U.S.C. § 18238, a unit of the National Guard or Air National Guard of the United States may not be relocated or withdrawn without the consent of the governor of the State in which the National Guard unit is located.

56. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut;

57. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

58. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

59. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

THIRD CAUSE OF ACTION
[Declaratory and Injunctive Relief]

60. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

61. The Secretary and the BRAC Commission have recommended that the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard be transferred or retired.

62. The BRAC Act does not grant the BRAC Commission the authority to change how a unit is equipped or organized.

63. Any recommendation by the BRAC Commission to transfer aircraft from one unit to another or to retire aircraft unlawfully exceeds its authority as granted and delineated by the BRAC Act.

64. The Plaintiffs request a Declaratory Judgment declaring that any recommendation by the BRAC Commission to transfer or retire aircraft assigned to the 103rd Fighter Wing of the Bradley is null and void.

65. The Plaintiffs request that the Court enjoin the defendants from recommending, mandating, directing, implementing, or controlling the transfer or

retirement of the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

66. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(1) Issue an order declaring that the realignment of the 103rd Fighter Wing of the Bradley Air National Guard as proposed by Secretary Rumsfeld and the BRAC Commission without the consent of the Governor of the State of Connecticut is prohibited by federal law;

(2) Issue an order declaring that portions of the DOD and BRAC Commission Reports that recommends realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void;

(3) Enjoin Defendant Rumsfeld and any other officer or employee of DOD from mandating, implementing, overseeing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports;

(4) Enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in


their final report and recommendations to be transmitted to the President on or before September 8, 2005.

(5) Award to the Plaintiffs, pursuant to 28 U.S.C. § 2412 and any other applicable statute, the costs, fees, and other expenses incurred in prosecuting this lawsuit; and

(6) Order such other and further relief as this Court may deem appropriate.

PLAINTIFFS,
M. JODI RELL, GOVERNOR OF
CONNECTICUT, CHRISTOPHER J.
DODD, JOSEPH I. LIEBERMAN, JOHN B.
LARSON, and
THE STATE OF CONNECTICUT

BY:



RICHARD BLUMENTHAL
ATTORNEY GENERAL
Federal Bar No. ct05924
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5020
Fax: (860) 808-5347

UNITED STATES DISTRICT COURT

District of

Connecticut

Governor, M. Jodi Rell, in her official capacity as Governor of the State of Connecticut, the State of Connecticut, Christopher J. Dodd and Joseph I. Lieberman in their official capacities as United States Senators and John B. Larson in his official capacity as United States Representative,

V.

SUMMONS IN A CIVIL CASE

Donald Rumsfeld, in his official capacity as Secretary of Defense, The Defense Base Closure and Realignment Commission, and Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, in their official capacities as members of the Defense Base Closure and Realignment Commission, Defendants

CASE NUMBER: #

305071363
AVC

TO: (Name and address of Defendant)

James H. Bilbray

Member

2005 Defense Base Closure and Realignment Commission

2521 S. Clark St., Ste. 600

Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

ATTORNEY
A TRUE COPY
Nancy F. Marino
NANCY F. MARINO
CONNECTICUT MARSHAL
HARTFORD COUNTY

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEVIN F. ROWE

CLERK

M. J. Blather
By) DEPUTY CLERK

DATE

August 29, 2005

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CT 06510
(203) 773-2140

450 MAIN STREET
HARTFORD, CT 06103
(860) 240-3200

915 LAFAYETTE BLVD
BRIDGEPORT, CT 06604
(203) 579-5861

14 COTTAGE PLACE
WATERBURY, CT 06702
(203) 597-6311

NOTICE TO COUNSEL AND PRO SE PARTIES

THE ATTACHED CASE HAS BEEN ASSIGNED TO JUDGE ALFRED V. COVELLO WHO SITS IN HARTFORD. COUNSEL AND PRO SE PARTIES SHOULD FILE ALL FUTURE PLEADINGS OR DOCUMENTS IN THIS MATTER WITH THE CLERK'S OFFICE IN HARTFORD. ANY ATTEMPT TO FILE PLEADINGS OR OTHER DOCUMENTS RELATED TO THIS ACTION IN ANY OF THE OTHER SEATS OF COURT WILL RESULT IN THOSE PLEADINGS OR DOCUMENTS BEING REFUSED AT THE COURT OR BEING RETURNED TO YOUR OFFICE. SEE D.CONN. L. CIV. R. 3(a).

COUNSEL AND PRO SE PARTIES ARE REQUIRED TO BECOME FAMILIAR WITH AND ABIDE BY THE FEDERAL RULES OF CIVIL PROCEDURE, THE LOCAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT OF CONNECTICUT AND STANDING ORDERS REGARDING SCHEDULING IN CIVIL CASES AND THE FILING OF TRIAL MEMORANDA.

COUNSEL AND PRO SE PARTIES ARE HEREBY NOTIFIED THAT FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION, WITHIN 21 DAYS AFTER THE MOTION IS FILED, MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION. FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION TO DISMISS WITHIN 21 DAYS AFTER THE MOTION IS FILED MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION, EXCEPT WHERE THE PLEADINGS PROVIDE SUFFICIENT GROUNDS TO DENY THE MOTION. SEE D.CONN. L. CIV. R. 7(a)1

COUNSEL AND PRO SE PARTIES ARE FURTHER NOTIFIED THAT THEY ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATING TO MOTIONS FOR SUMMARY JUDGMENT AS SET FORTH IN FED. R. CIV. P. 56 AND D.CONN. L. CIV. R. 56. A PARTY MAY MOVE FOR SUMMARY JUDGMENT WHEN THAT PARTY BELIEVES THERE IS NO GENUINE ISSUE OF MATERIAL FACT REQUIRING TRIAL AND THE PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. THE MOTION MAY BE DIRECTED TOWARD ALL OR PART OF A CLAIM OR DEFENSE AND IT MAY BE MADE ON THE BASIS OF THE PLEADINGS OR OTHER PORTIONS OF THE RECORD IN THE CASE OR IT MAY BE SUPPORTED BY AFFIDAVITS AND OTHER MATERIALS OUTSIDE THE PLEADINGS.

WHEN A PARTY SEEKING SUMMARY JUDGMENT (THE "MOVING PARTY") FILES A SUPPORTING AFFIDAVIT, THE PARTY OPPOSING SUMMARY JUDGMENT MUST FILE AN AFFIDAVIT, OR OTHER DOCUMENTARY EVIDENCE, CONTRADICTING THE MOVING PARTY'S SUBMISSIONS TO DEMONSTRATE THAT THERE ARE FACTUAL ISSUES REQUIRING A TRIAL. FACTS ASSERTED IN THE AFFIDAVIT(S) OF THE MOVING PARTY WILL BE TAKEN AS TRUE IF NOT CONTROVERTED BY COUNTER-AFFIDAVITS OR OTHER DOCUMENTARY EVIDENCE.

LOCAL CIVIL RULE 56(a) REQUIRES THE PARTY SEEKING SUMMARY JUDGMENT TO FILE A DOCUMENT ENTITLED "LOCAL RULE 56(a)1 STATEMENT," WHICH SETS FORTH IN SEPARATELY NUMBERED PARAGRAPHS A CONCISE STATEMENT OF EACH MATERIAL FACT AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED. THE MATERIAL FACTS SET FORTH IN THIS STATEMENT SHALL BE DEEMED ADMITTED UNLESS CONTROVERTED BY THE "LOCAL RULE 56(a)2 STATEMENT" REQUIRED TO BE SERVED BY THE OPPOSING PARTY. THE PARAGRAPHS IN THE 56(a)2 STATEMENT SHALL CORRESPOND TO THE PARAGRAPHS IN THE 56(a)1 STATEMENT AND SHALL STATE WHETHER THE FACTS ASSERTED BY THE MOVING PARTY ARE ADMITTED OR DENIED. THE LOCAL RULE 56(a)2 STATEMENT MUST ALSO INCLUDE IN A SEPARATE SECTION A LIST OF EACH ISSUE OF MATERIAL FACT AS TO WHICH IT IS CONTENDED THERE IS A GENUINE ISSUE TO BE TRIED.

COUNSEL AND PRO SE PARTIES ARE ALERTED TO THE REQUIREMENTS OF FED. R. CIV. P. 26(f) AND LOCAL CIVIL RULE 26, WHICH REQUIRE THAT THE PARTIES CONDUCT A CASE MANAGEMENT PLANNING CONFERENCE AND PREPARE AND FILE A REPORT OF THE CONFERENCE ON FORM 26(f) WHICH APPEARS IN THE APPENDIX TO THE LOCAL RULES.

COUNSEL AND PRO SE PARTIES ARE FURTHER ADVISED THAT THEY MAY REQUEST A REFERRAL OF THEIR CASE TO A UNITED STATES MAGISTRATE JUDGE FOR DISPOSITION. SEE 28 U.S.C. 636 AND RULE 77.2 OF THE LOCAL RULES FOR UNITED STATES MAGISTRATE JUDGES.

KEVIN F. ROWE, CLERK

30501333

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

2005 AUG 29 P 1:06

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(e), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R. Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(e) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
Kevin F. Rowe, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 1/2/03)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ORDER RE: DISCLOSURE STATEMENT

ANY NONGOVERNMENTAL CORPORATE PARTY TO AN ACTION IN THIS COURT SHALL FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK. A PARTY SHALL FILE THE STATEMENT WITH ITS INITIAL PLEADING FILED IN THE COURT AND SHALL SUPPLEMENT THE STATEMENT WITHIN A REASONABLE TIME OF ANY CHANGE IN THE INFORMATION. COUNSEL SHALL APPEND A CERTIFICATE OF SERVICE TO THE STATEMENT IN COMPLIANCE WITH LOCAL RULE 5(b).

COUNSEL FOR PLAINTIFF OR REMOVING DEFENDANT SHALL BE RESPONSIBLE FOR SERVING A COPY OF THIS ORDER UPON ALL PARTIES TO THE ACTION.

BY ORDER OF THE COURT
KEVIN F. ROWE, CLERK

Revised 1/2/03

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE TO COUNSEL
FOR CASES REMOVED FROM SUPERIOR COURT

STANDING ORDER

All parties removing actions to this Court pursuant to 28 U.S.C. §1441 shall, no later than five (5) days after filing a notice of removal, file and serve a signed statement that sets forth the following information:

1. The date on which each defendant first received a copy of the summons and complaint in the state court action.
2. The date on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the dates set forth in item 1.
3. In diversity cases, whether any defendant who has been served is a citizen of Connecticut.
4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal has taken place at this time.
5. The name of any defendant served prior to the filing of the notice of removal who has not formally joined in the notice of removal and the reasons why any such defendant did not join in the notice of removal.

At the time a removal notice is filed with the Clerk of this Court, the removing party shall also file with the Clerk a separate notice, entitled "Notice of Pending Motions," specifying any pending motions that require action by a Judge of this Court and attaching a true and complete copy of each such motion and all supporting and opposition papers.

The removing party shall list in its certificate of service immediately below the name and address of counsel the name of the party or parties represented by said counsel and all parties appearing pro se.

NOTICE TO COUNSEL RE LOCAL RULE 5(a)

To ensure that our records are complete and to ensure that you receive notice of hearings and any court rulings, PLEASE FILE AN APPEARANCE with this office in accordance with Local Rule 5(a) of the Local Rules of Civil Procedure for the District of Connecticut.

NOTICE RE PLANNING CONFERENCE AND REPORT

Pursuant to Fed. R. Civ. P. 26 and Local Civil Rule 26(e) counsel and pro se parties must conduct a case management conference within 30 days of the appearance of the opposing party and must jointly file a planning conference report within 10 days thereafter using Form 26(f), which appears in the Appendix to the Local Rules.

Counsel for the removing defendant(s) is responsible for immediately serving a copy of this notice on all counsel of record and all unrepresented parties at their last known address.

KEVIN F. ROWE
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GOVERNOR M. JODI RELL, in her
official capacity as Governor of the
State of Connecticut, CHRISTOPHER
J. DODD, in his official capacity as
United States Senator, JOSEPH I.
LIEBERMAN in his official capacity as
United States Senator, JOHN B.
LARSON, in his official capacity as
United States Representative, and
STATE OF CONNECTICUT,
Plaintiffs,

v.

DONALD RUMSFELD,
in his official capacity as
Secretary of Defense,
THE DEFENSE BASE CLOSURE
AND REALIGNMENT COMMISSION,
and ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the
the Defense Base Closure and
Realignment and Commission, and
JAMES H. BILBRAY, PHILIP COYLE,
HAROLD W. GEHMAN, JR.,
JAMES V. VINSON, JAMES T. HILL,
LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER,
in their official capacities as members
of the Defense Base Closure and
Realignment Commission,
Defendants.

CIVIL ACTION NO.

288

AVC

2005 AUG 29 12:50

FILED

August 29, 2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff State of Connecticut has a fundamental, long-standing duty to ensure the security of its citizens, including through the maintenance of a state militia.

The State's right to maintain and direct its own militia is deeply rooted in both the U.S. Constitution and its State Constitution. See U.S. Constitution Article I, Section 8, clauses 15 & 16 and Connecticut Constitution, Article Fourth, sec. 8.

2. The National Guard system is the successor to the original state militias. The National Guard and Air National Guard are dual federal and state organizations, with dual enlistments, whereby the National Guard military personnel swear allegiance to both the federal and state governments, and are simultaneously enlisted or commissioned with both the state and federal governments.

3. The plaintiff, M. Jodi Rell, Governor of the State of Connecticut, is the "captain general of the militia of the state, except when called into the service of the United States." See Connecticut Constitution, Article Fourth, sec. 8. As "commander-in-chief" of both the National Guard and Air National Guard in Connecticut, Governor Rell directs the National Guard and Air National Guard unless the Guard units are called into active federal military service. See Conn. Gen. Stat. § 27-14.

4. Plaintiff Christopher J. Dodd is a duly elected United States Senator for the State of Connecticut.

5. Plaintiff Joseph I. Lieberman is a duly elected United States Senator for the State of Connecticut.

6. Plaintiff John B. Larson is a duly elected United States Representative for the First Congressional District of Connecticut. The First Congressional District encompasses the town of Windsor Locks, Connecticut, in which the Bradley Air National Guard Station is located.

7. A unit of the Connecticut National Guard or Air National Guard may not be relocated or withdrawn without the consent of Governor Rell. See 10 U.S.C. § 18238.

8. No change in the branch, organization, or allotment of a National Guard or Air National Guard unit located entirely within a state may be made without the approval of its governor. See 32 U.S.C. § 104.

9. Defendant Secretary Donald Rumsfeld (the "Secretary" or "Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense ("DOD"). Secretary Rumsfeld is sued in his official capacity.

10. The Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (the "BRAC Act"), sets forth the process by which military bases in the United States and its territories are identified for closure or realignment.

11. Pursuant to the BRAC Act, as amended, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the defendant Defense Base Closure and Realignment Commission (the "BRAC Commission").

12. Defendant Anthony J. Principi is the Chairman of the BRAC Commission. Chairman Principi is sued in his official capacity.

13. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

14. Secretary Rumsfeld is responsible for overseeing, directing and/or implementing the closure or realignment of military bases pursuant to the BRAC process.

15. On or about May 13, 2005, Secretary Rumsfeld transmitted the DOD Base Closure and Realignment Report ("DOD Report") to the BRAC Commission.

16. The DOD Report contains the DOD's recommendations to realign or close military installations within the United States and its territories.

17. The DOD Report recommends the realignment of the Connecticut 103rd Fighter Wing located at Bradley Air National Guard Station in Windsor Locks, Connecticut. In particular, the Secretary has recommended that "[t]he A-10s assigned to the 103d Fighter Wing will be distributed to the 104th Fighter Wing, Barnes Municipal Airport Air Guard Station, MA (nine aircraft) and retirement (six aircraft)," and realigning the flying unit into the Massachusetts Air Guard. See DOD Recommendations, Sec. 3 (Air Force) at 14.

18. On August 26, 2005, the BRAC Commission adopted and approved the DOD's recommendation to realign the 103rd Fighter Wing.

19. The decision to adopt the DOD's recommendation to realign the 103rd Fighter Wing is not subject to any further review by the BRAC Commission and becomes part of its final report and recommendations to be transmitted to the President of the United States by September 8, 2005.

20. Pursuant to the BRAC Act, the President of the United States must approve or disapprove the BRAC Commission's recommendations in their entirety. He

may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing.

21. In each of the four previous BRAC processes – occurring in 1988, 1991, 1993 and 1995 – the President approved the BRAC Commission's recommendations in their entirety.

22. The President has stated publicly that he will approve the BRAC Commission's recommendations in their entirety and forward them to Congress.

23. The deadline for the President to forward to the Congress his approval of the BRAC Commission's recommendations is September 23, 2005. Congress's authority is limited to disapproving the entire slate of closures and realignments. Congress may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing. If Congress does not affirmatively act to disapprove the recommendations in their entirety within 45 legislative days of their transmittal from the President, they become law. Thereafter, Secretary Rumsfeld would be responsible for implementing all final closure and realignment decisions.

24. Congress has never disapproved the President's base closure and realignment decisions.

25. The 103rd Fighter Wing is an operational flying National Guard Unit located entirely within the State of Connecticut and is not currently activated to federal service. Initially formed in 1917, the 103rd Fighter Wing, also known as the "Flying Yankees," is made up the 103rd Operations Group, 103rd Mission Support Group, 103rd Maintenance Group and the 103rd Medical Group. Within each group are squadrons

and flights that come together to make up the more than 900 men and women of the 103rd Fighter Wing.

26. Transferring and/or retiring all of the 103rd Fighter Wing's aircraft would eliminate Connecticut's only Air National Guard fighter squadron. Transfer of these aircraft out of Connecticut would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command.

27. According to published reports, the Secretary's and BRAC Commission's recommendations would leave Connecticut as one of only two states without a single Air National Guard aircraft assigned within its borders.

28. The elimination of Connecticut's only Air National Guard Fighter Wing would have an immediate negative affect on enlistment and reenlistment in the Air National Guard in Connecticut.

29. The 103rd Fighter Wing is one of the world's premier A-10 flying units. Its members have demonstrated their excellence during missions over Bosnia and Iraq, including in Operation Iraqi Freedom, Operation Southern Watch and Operation Deny Flight.

30. The 103rd Fighter Wing is not activated to federal service. Thus, the 103rd Fighter Wing is under the command of the Governor of Connecticut. Responding to state or community emergencies is co-equal, and in no way subordinate, to the 103rd Fighter wing's federal responsibilities.

31. The proposed realignment of the 103rd Fighter Wing is a change in the branch, organization or allotment of the unit.

32. The proposed realignment of the 103rd Fighter Wing is a relocation or withdrawal of a unit of the Air National Guard.

33. In recommending the realignment of the 103rd Fighter Wing, the BRAC Commission contravened the law and the legal advice of its own counsel. By memorandum dated July 14, 2005, legal counsel to the BRAC Commission correctly recognized that the BRAC Act did not authorize the DOD or its Secretary to change the organization of or withdraw or disband a National Guard unit unless the DOD obtained the consent of the governor where the unit was located. In particular, the BRAC Commission's staff's legal analysis, which was approved by its General Counsel, concluded that

[w]here the practical result of an Air Force Recommendation would be to withdraw, disband, or change the organization of an Air National Guard Unit, the Commission may not approve such a recommendation without the consent of the Governor Concerned.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 15.

34. The recommendations by the BRAC Commission and Secretary Rumsfeld to transfer and/or retire aircraft currently assigned to the Bradley Air Guard Unit are also unlawful in that they call for action beyond the Commission's authority as delineated by the BRAC Act. The BRAC Commission's legal staff concluded that:

The Base Closure Act does not grant the Commission the authority to change how a unit is equipped or organized. Recommendations that

serve primarily to transfer aircraft from one unit to another, to retire aircraft, or to address an imbalance in the active-reserve force mix are outside the authority granted by the Act. The Commission must act to remove such provisions from its recommendations.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 10.

35. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to change the branch, organization or allotment of the 103rd Fighter Wing, or any portion thereof.

36. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to relocate or withdraw the 103rd Fighter Wing or any portion thereof.

37. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to deactivate the 103rd Fighter Wing or any portion thereof.

38. In her letter of June 14, 2005, Governor Rell informed the Secretary that she does not consent to the realignment, relocation, withdrawal, deactivation or change in the branch, organization or allotment of the 103rd Fighter Wing.

JURISDICTION

39. This is a lawsuit for declaratory and injunctive relief based upon 10 U.S.C. § 18238 and 32 U.S.C. § 104.

40. Pursuant to 28 U.S.C. §§ 1331, 1346, 2201, and 2202, this Court has jurisdiction over the parties and claims in this lawsuit.

41. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

42. Pursuant to the process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of realignments and closures of military installations. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

43. The BRAC Commission voted on August 26, 2005 to accept the Secretary's recommendation with regard to the 103rd Fighter Wing. The BRAC Commission is preparing to transmit this and its other recommendations to the President on or before September 8, 2005.

44. By voting to eliminate the 103rd Fighter Wing and transmit this recommendation to the President, the BRAC Commission, Chairman Principi and the BRAC Commissioners have finally and completely fulfilled their responsibilities under the BRAC Act with respect to the 103rd Fighter Wing. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

45. The harm as detailed herein is neither speculative nor conjectural, but rather is already complete as the Governor's right to disapprove changes to the branch, organization or allotment of the 103rd Fighter Wing has been nullified by the Secretary's and BRAC Commission's recommendations.

46. Additional harm is imminent as neither the President nor Congress may remove the 103rd Fighter Wing from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. The President has stated publicly that he will accept the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them and the President must act by September 23, 2005.

IRREPARABLE HARM

47. Absent a preliminary injunction, the harm as alleged herein would be irreparable. In addition to nullifying the Governor's right to disapprove changes to the organization or allotment of Connecticut's Air National Guard, the Secretary's and BRAC Commission's recommendation would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command. The proposed elimination of Connecticut's only Air National Guard Fighter Wing would immediately and negatively affect

enlistments and reenlistments in Connecticut's Air National Guard. In addition, once the BRAC Commission transmits its recommendations to the President, the ability to obtain effective judicial relief is severely diminished or eliminated.

FIRST CAUSE OF ACTION
[Declaratory and Injunctive Relief]

48. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

49. Pursuant to 32 U.S.C. § 104, no change in the branch, organization or allotment of a National Guard Unit located entirely within a State may be made without the approval of that State's Governor.

50. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut.

51. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

52. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

53. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

SECOND CAUSE OF ACTION
[Declaratory and Injunctive Relief]

54. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

55. Pursuant to 10 U.S.C. § 18238, a unit of the National Guard or Air National Guard of the United States may not be relocated or withdrawn without the consent of the governor of the State in which the National Guard unit is located.

56. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut;

57. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

58. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

59. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

THIRD CAUSE OF ACTION
[Declaratory and Injunctive Relief]

60. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

61. The Secretary and the BRAC Commission have recommended that the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard be transferred or retired.

62. The BRAC Act does not grant the BRAC Commission the authority to change how a unit is equipped or organized.

63. Any recommendation by the BRAC Commission to transfer aircraft from one unit to another or to retire aircraft unlawfully exceeds its authority as granted and delineated by the BRAC Act.

64. The Plaintiffs request a Declaratory Judgment declaring that any recommendation by the BRAC Commission to transfer or retire aircraft assigned to the 103rd Fighter Wing of the Bradley is null and void.

65. The Plaintiffs request that the Court enjoin the defendants from recommending, mandating, directing, implementing, or controlling the transfer or

retirement of the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

66. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(1) Issue an order declaring that the realignment of the 103rd Fighter Wing of the Bradley Air National Guard as proposed by Secretary Rumsfeld and the BRAC Commission without the consent of the Governor of the State of Connecticut is prohibited by federal law;

(2) Issue an order declaring that portions of the DOD and BRAC Commission Reports that recommends realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void;

(3) Enjoin Defendant Rumsfeld and any other officer or employee of DOD from mandating, implementing, overseeing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports;

(4) Enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in


their final report and recommendations to be transmitted to the President on or before September 8, 2005.

(5) Award to the Plaintiffs, pursuant to 28 U.S.C. § 2412 and any other applicable statute, the costs, fees, and other expenses incurred in prosecuting this lawsuit; and

(6) Order such other and further relief as this Court may deem appropriate.

PLAINTIFFS,
M. JODI RELL, GOVERNOR OF
CONNECTICUT, CHRISTOPHER J.
DODD, JOSEPH I. LIEBERMAN, JOHN B.
LARSON, and
THE STATE OF CONNECTICUT

BY:



RICHARD BLUMENTHAL
ATTORNEY GENERAL
Federal Bar No. ct05924
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5020
Fax: (860) 808-5347

UNITED STATES DISTRICT COURT

District of Connecticut

Governor, M. Jodi Rell, in her official capacity as Governor of the State of Connecticut, the State of Connecticut, Christopher J. Dodd and Joseph I. Lieberman in their official capacities as United States Senators and John B. Larson in his official capacity as United States Representative,

V.

SUMMONS IN A CIVIL CASE

Donald Rumsfeld, in his official capacity as Secretary of Defense, The Defense Base Closure and Realignment Commission, and Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, in their official capacities as members of the Defense Base Closure and Realignment Commission, Defendants

CASE NUMBER: #

305CV1363
AVC

TO: (Name and address of Defendant)
Philip Coyle
Member
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

ATTEST:
A TRUE COPY
Nancy F. Marino
NANCY F. MARINO
CONNECTICUT MARSHAL
HARTFORD COUNTY

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEVIN F. ROWE

CLERK

M. L. Bother
DEPUTY CLERK

DATE

August 29, 2005

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CT 06510
(203) 773-2140

450 MAIN STREET
HARTFORD, CT 06103
(860) 240-3200

915 LAFAYETTE BLVD
BRIDGEPORT, CT 06604
(203) 579-5861

14 COTTAGE PLACE
WATERBURY, CT 06702
(203) 597-6311

NOTICE TO COUNSEL AND PRO SE PARTIES

THE ATTACHED CASE HAS BEEN ASSIGNED TO JUDGE ALFRED V. COVELLO WHO SITS IN HARTFORD. COUNSEL AND PRO SE PARTIES SHOULD FILE ALL FUTURE PLEADINGS OR DOCUMENTS IN THIS MATTER WITH THE CLERK'S OFFICE IN HARTFORD. ANY ATTEMPT TO FILE PLEADINGS OR OTHER DOCUMENTS RELATED TO THIS ACTION IN ANY OF THE OTHER SEATS OF COURT WILL RESULT IN THOSE PLEADINGS OR DOCUMENTS BEING REFUSED AT THE COURT OR BEING RETURNED TO YOUR OFFICE. SEE D.CONN. L. CIV. R. 3(a).

COUNSEL AND PRO SE PARTIES ARE REQUIRED TO BECOME FAMILIAR WITH AND ABIDE BY THE FEDERAL RULES OF CIVIL PROCEDURE, THE LOCAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT OF CONNECTICUT AND STANDING ORDERS REGARDING SCHEDULING IN CIVIL CASES AND THE FILING OF TRIAL MEMORANDA.

COUNSEL AND PRO SE PARTIES ARE HEREBY NOTIFIED THAT FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION, WITHIN 21 DAYS AFTER THE MOTION IS FILED, MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION. FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION TO DISMISS WITHIN 21 DAYS AFTER THE MOTION IS FILED MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION, EXCEPT WHERE THE PLEADINGS PROVIDE SUFFICIENT GROUNDS TO DENY THE MOTION. SEE D.CONN. L. CIV. R. 7(a)1

COUNSEL AND PRO SE PARTIES ARE FURTHER NOTIFIED THAT THEY ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATING TO MOTIONS FOR SUMMARY JUDGMENT AS SET FORTH IN FED. R. CIV. P. 56 AND D.CONN. L. CIV. R. 56. A PARTY MAY MOVE FOR SUMMARY JUDGMENT WHEN THAT PARTY BELIEVES THERE IS NO GENUINE ISSUE OF MATERIAL FACT REQUIRING TRIAL AND THE PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. THE MOTION MAY BE DIRECTED TOWARD ALL OR PART OF A CLAIM OR DEFENSE AND IT MAY BE MADE ON THE BASIS OF THE PLEADINGS OR OTHER PORTIONS OF THE RECORD IN THE CASE OR IT MAY BE SUPPORTED BY AFFIDAVITS AND OTHER MATERIALS OUTSIDE THE PLEADINGS.

WHEN A PARTY SEEKING SUMMARY JUDGMENT (THE "MOVING PARTY") FILES A SUPPORTING AFFIDAVIT, THE PARTY OPPOSING SUMMARY JUDGMENT MUST FILE AN AFFIDAVIT, OR OTHER DOCUMENTARY EVIDENCE, CONTRADICTING THE MOVING PARTY'S SUBMISSIONS TO DEMONSTRATE THAT THERE ARE FACTUAL ISSUES REQUIRING A TRIAL. FACTS ASSERTED IN THE AFFIDAVIT(S) OF THE MOVING PARTY WILL BE TAKEN AS TRUE IF NOT CONTROVERTED BY COUNTER-AFFIDAVITS OR OTHER DOCUMENTARY EVIDENCE.

LOCAL CIVIL RULE 56(a) REQUIRES THE PARTY SEEKING SUMMARY JUDGMENT TO FILE A DOCUMENT ENTITLED "LOCAL RULE 56(a)1 STATEMENT," WHICH SETS FORTH IN SEPARATELY NUMBERED PARAGRAPHS A CONCISE STATEMENT OF EACH MATERIAL FACT AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED. THE MATERIAL FACTS SET FORTH IN THIS STATEMENT SHALL BE DEEMED ADMITTED UNLESS CONTROVERTED BY THE "LOCAL RULE 56(a)2 STATEMENT" REQUIRED TO BE SERVED BY THE OPPOSING PARTY. THE PARAGRAPHS IN THE 56(a)2 STATEMENT SHALL CORRESPOND TO THE PARAGRAPHS IN THE 56(a)1 STATEMENT AND SHALL STATE WHETHER THE FACTS ASSERTED BY THE MOVING PARTY ARE ADMITTED OR DENIED. THE LOCAL RULE 56(a)2 STATEMENT MUST ALSO INCLUDE IN A SEPARATE SECTION A LIST OF EACH ISSUE OF MATERIAL FACT AS TO WHICH IT IS CONTENDED THERE IS A GENUINE ISSUE TO BE TRIED.

COUNSEL AND PRO SE PARTIES ARE ALERTED TO THE REQUIREMENTS OF FED. R. CIV. P. 26(f) AND LOCAL CIVIL RULE 26, WHICH REQUIRE THAT THE PARTIES CONDUCT A CASE MANAGEMENT PLANNING CONFERENCE AND PREPARE AND FILE A REPORT OF THE CONFERENCE ON FORM 26(f) WHICH APPEARS IN THE APPENDIX TO THE LOCAL RULES.

COUNSEL AND PRO SE PARTIES ARE FURTHER ADVISED THAT THEY MAY REQUEST A REFERRAL OF THEIR CASE TO A UNITED STATES MAGISTRATE JUDGE FOR DISPOSITION. SEE 28 U.S.C. 636 AND RULE 77.2 OF THE LOCAL RULES FOR UNITED STATES MAGISTRATE JUDGES.

KEVIN F. ROWE, CLERK

30501363

UNITED STATES DISTRICT COURT 2005 MAR 29 P 1:06
DISTRICT OF CONNECTICUT

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(e), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R. Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(e) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
Kevin F. Rowe, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 1/2/03)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ORDER RE: DISCLOSURE STATEMENT

ANY NONGOVERNMENTAL CORPORATE PARTY TO AN ACTION IN THIS COURT SHALL FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK. A PARTY SHALL FILE THE STATEMENT WITH ITS INITIAL PLEADING FILED IN THE COURT AND SHALL SUPPLEMENT THE STATEMENT WITHIN A REASONABLE TIME OF ANY CHANGE IN THE INFORMATION. COUNSEL SHALL APPEND A CERTIFICATE OF SERVICE TO THE STATEMENT IN COMPLIANCE WITH LOCAL RULE 5(b).

COUNSEL FOR PLAINTIFF OR REMOVING DEFENDANT SHALL BE RESPONSIBLE FOR SERVING A COPY OF THIS ORDER UPON ALL PARTIES TO THE ACTION.

BY ORDER OF THE COURT
KEVIN F. ROWE, CLERK

Revised 1/2/03

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE TO COUNSEL
FOR CASES REMOVED FROM SUPERIOR COURT

STANDING ORDER

All parties removing actions to this Court pursuant to 28 U.S.C. §1441 shall, no later than five (5) days after filing a notice of removal, file and serve a signed statement that sets forth the following information:

1. The date on which each defendant first received a copy of the summons and complaint in the state court action.
2. The date on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the dates set forth in item 1.
3. In diversity cases, whether any defendant who has been served is a citizen of Connecticut.
4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal has taken place at this time.
5. The name of any defendant served prior to the filing of the notice of removal who has not formally joined in the notice of removal and the reasons why any such defendant did not join in the notice of removal.

At the time a removal notice is filed with the Clerk of this Court, the removing party shall also file with the Clerk a separate notice, entitled "Notice of Pending Motions," specifying any pending motions that require action by a Judge of this Court and attaching a true and complete copy of each such motion and all supporting and opposition papers.

The removing party shall list in its certificate of service immediately below the name and address of counsel the name of the party or parties represented by said counsel and all parties appearing pro se.

NOTICE TO COUNSEL RE LOCAL RULE 5(a)

To ensure that our records are complete and to ensure that you receive notice of hearings and any court rulings, PLEASE FILE AN APPEARANCE with this office in accordance with Local Rule 5(a) of the Local Rules of Civil Procedure for the District of Connecticut.

NOTICE RE PLANNING CONFERENCE AND REPORT

Pursuant to Fed. R. Civ. P. 26 and Local Civil Rule 26(e) counsel and pro se parties must conduct a case management conference within 30 days of the appearance of the opposing party and must jointly file a planning conference report within 10 days thereafter using Form 26(f), which appears in the Appendix to the Local Rules.

Counsel for the removing defendant(s) is responsible for immediately serving a copy of this notice on all counsel of record and all unrepresented parties at their last known address.

KEVIN F. ROWE
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GOVERNOR M. JODI RELL, in her
official capacity as Governor of the
State of Connecticut, CHRISTOPHER
J. DODD, in his official capacity as
United States Senator, JOSEPH I.
LIEBERMAN in his official capacity as
United States Senator, JOHN B.
LARSON, in his official capacity as
United States Representative, and
STATE OF CONNECTICUT,
Plaintiffs,

v.

DONALD RUMSFELD,
in his official capacity as
Secretary of Defense,
THE DEFENSE BASE CLOSURE
AND REALIGNMENT COMMISSION,
and ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the
the Defense Base Closure and
Realignment and Commission, and
JAMES H. BILBRAY, PHILIP COYLE,
HAROLD W. GEHMAN, JR.,
JAMES V. VINSON, JAMES T. HILL,
LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER,
in their official capacities as members
of the Defense Base Closure and
Realignment Commission,
Defendants.

CIVIL ACTION NO.

3:05011368

AVC

2005 AUG 29 PM 13:50

FILED

August 29, 2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff State of Connecticut has a fundamental, long-standing duty to ensure the security of its citizens, including through the maintenance of a state militia.

The State's right to maintain and direct its own militia is deeply rooted in both the U.S. Constitution and its State Constitution. See U.S. Constitution Article I, Section 8, clauses 15 & 16 and Connecticut Constitution, Article Fourth, sec. 8.

2. The National Guard system is the successor to the original state militias. The National Guard and Air National Guard are dual federal and state organizations, with dual enlistments, whereby the National Guard military personnel swear allegiance to both the federal and state governments, and are simultaneously enlisted or commissioned with both the state and federal governments.

3. The plaintiff, M. Jodi Rell, Governor of the State of Connecticut, is the "captain general of the militia of the state, except when called into the service of the United States." See Connecticut Constitution, Article Fourth, sec. 8. As "commander-in-chief" of both the National Guard and Air National Guard in Connecticut, Governor Rell directs the National Guard and Air National Guard unless the Guard units are called into active federal military service. See Conn. Gen. Stat. § 27-14.

4. Plaintiff Christopher J. Dodd is a duly elected United States Senator for the State of Connecticut.

5. Plaintiff Joseph I. Lieberman is a duly elected United States Senator for the State of Connecticut.

6. Plaintiff John B. Larson is a duly elected United States Representative for the First Congressional District of Connecticut. The First Congressional District encompasses the town of Windsor Locks, Connecticut, in which the Bradley Air National Guard Station is located.

7. A unit of the Connecticut National Guard or Air National Guard may not be relocated or withdrawn without the consent of Governor Rell. See 10 U.S.C. § 18238.

8. No change in the branch, organization, or allotment of a National Guard or Air National Guard unit located entirely within a state may be made without the approval of its governor. See 32 U.S.C. § 104.

9. Defendant Secretary Donald Rumsfeld (the "Secretary" or "Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense ("DOD"). Secretary Rumsfeld is sued in his official capacity.

10. The Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (the "BRAC Act"), sets forth the process by which military bases in the United States and its territories are identified for closure or realignment.

11. Pursuant to the BRAC Act, as amended, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the defendant Defense Base Closure and Realignment Commission (the "BRAC Commission").

12. Defendant Anthony J. Principi is the Chairman of the BRAC Commission. Chairman Principi is sued in his official capacity.

13. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

14. Secretary Rumsfeld is responsible for overseeing, directing and/or implementing the closure or realignment of military bases pursuant to the BRAC process.

15. On or about May 13, 2005, Secretary Rumsfeld transmitted the DOD Base Closure and Realignment Report ("DOD Report") to the BRAC Commission.

16. The DOD Report contains the DOD's recommendations to realign or close military installations within the United States and its territories.

17. The DOD Report recommends the realignment of the Connecticut 103rd Fighter Wing located at Bradley Air National Guard Station in Windsor Locks, Connecticut. In particular, the Secretary has recommended that "[t]he A-10s assigned to the 103d Fighter Wing will be distributed to the 104th Fighter Wing, Barnes Municipal Airport Air Guard Station, MA (nine aircraft) and retirement (six aircraft)," and realigning the flying unit into the Massachusetts Air Guard. See DOD Recommendations, Sec. 3 (Air Force) at 14.

18. On August 26, 2005, the BRAC Commission adopted and approved the DOD's recommendation to realign the 103rd Fighter Wing.

19. The decision to adopt the DOD's recommendation to realign the 103rd Fighter Wing is not subject to any further review by the BRAC Commission and becomes part of its final report and recommendations to be transmitted to the President of the United States by September 8, 2005.

20. Pursuant to the BRAC Act, the President of the United States must approve or disapprove the BRAC Commission's recommendations in their entirety. He

may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing.

21. In each of the four previous BRAC processes – occurring in 1988, 1991, 1993 and 1995 – the President approved the BRAC Commission's recommendations in their entirety.

22. The President has stated publicly that he will approve the BRAC Commission's recommendations in their entirety and forward them to Congress.

23. The deadline for the President to forward to the Congress his approval of the BRAC Commission's recommendations is September 23, 2005. Congress's authority is limited to disapproving the entire slate of closures and realignments. Congress may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing. If Congress does not affirmatively act to disapprove the recommendations in their entirety within 45 legislative days of their transmittal from the President, they become law. Thereafter, Secretary Rumsfeld would be responsible for implementing all final closure and realignment decisions.

24. Congress has never disapproved the President's base closure and realignment decisions.

25. The 103rd Fighter Wing is an operational flying National Guard Unit located entirely within the State of Connecticut and is not currently activated to federal service. Initially formed in 1917, the 103rd Fighter Wing, also known as the "Flying Yankees," is made up the 103rd Operations Group, 103rd Mission Support Group, 103rd Maintenance Group and the 103rd Medical Group. Within each group are squadrons

and flights that come together to make up the more than 900 men and women of the 103rd Fighter Wing.

26. Transferring and/or retiring all of the 103rd Fighter Wing's aircraft would eliminate Connecticut's only Air National Guard fighter squadron. Transfer of these aircraft out of Connecticut would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command.

27. According to published reports, the Secretary's and BRAC Commission's recommendations would leave Connecticut as one of only two states without a single Air National Guard aircraft assigned within its borders.

28. The elimination of Connecticut's only Air National Guard Fighter Wing would have an immediate negative affect on enlistment and reenlistment in the Air National Guard in Connecticut.

29. The 103rd Fighter Wing is one of the world's premier A-10 flying units. Its members have demonstrated their excellence during missions over Bosnia and Iraq, including in Operation Iraqi Freedom, Operation Southern Watch and Operation Deny Flight.

30. The 103rd Fighter Wing is not activated to federal service. Thus, the 103rd Fighter Wing is under the command of the Governor of Connecticut. Responding to state or community emergencies is co-equal, and in no way subordinate, to the 103rd Fighter wing's federal responsibilities.

31. The proposed realignment of the 103rd Fighter Wing is a change in the branch, organization or allotment of the unit.

32. The proposed realignment of the 103rd Fighter Wing is a relocation or withdrawal of a unit of the Air National Guard.

33. In recommending the realignment of the 103rd Fighter Wing, the BRAC Commission contravened the law and the legal advice of its own counsel. By memorandum dated July 14, 2005, legal counsel to the BRAC Commission correctly recognized that the BRAC Act did not authorize the DOD or its Secretary to change the organization of or withdraw or disband a National Guard unit unless the DOD obtained the consent of the governor where the unit was located. In particular, the BRAC Commission's staff's legal analysis, which was approved by its General Counsel, concluded that

[w]here the practical result of an Air Force Recommendation would be to withdraw, disband, or change the organization of an Air National Guard Unit, the Commission may not approve such a recommendation without the consent of the Governor Concerned.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 15.

34. The recommendations by the BRAC Commission and Secretary Rumsfeld to transfer and/or retire aircraft currently assigned to the Bradley Air Guard Unit are also unlawful in that they call for action beyond the Commission's authority as delineated by the BRAC Act. The BRAC Commission's legal staff concluded that:

The Base Closure Act does not grant the Commission the authority to change how a unit is equipped or organized. Recommendations that

serve primarily to transfer aircraft from one unit to another, to retire aircraft, or to address an imbalance in the active-reserve force mix are outside the authority granted by the Act. The Commission must act to remove such provisions from its recommendations.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 10.

35. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to change the branch, organization or allotment of the 103rd Fighter Wing, or any portion thereof.

36. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to relocate or withdraw the 103rd Fighter Wing or any portion thereof.

37. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to deactivate the 103rd Fighter Wing or any portion thereof.

38. In her letter of June 14, 2005, Governor Rell informed the Secretary that she does not consent to the realignment, relocation, withdrawal, deactivation or change in the branch, organization or allotment of the 103rd Fighter Wing.

JURISDICTION

39. This is a lawsuit for declaratory and injunctive relief based upon 10 U.S.C. § 18238 and 32 U.S.C. § 104.

40. Pursuant to 28 U.S.C. §§ 1331, 1346, 2201, and 2202, this Court has jurisdiction over the parties and claims in this lawsuit.

41. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

42. Pursuant to the process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of realignments and closures of military installations. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

43. The BRAC Commission voted on August 26, 2005 to accept the Secretary's recommendation with regard to the 103rd Fighter Wing. The BRAC Commission is preparing to transmit this and its other recommendations to the President on or before September 8, 2005.

44. By voting to eliminate the 103rd Fighter Wing and transmit this recommendation to the President, the BRAC Commission, Chairman Principi and the BRAC Commissioners have finally and completely fulfilled their responsibilities under the BRAC Act with respect to the 103rd Fighter Wing. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

45. The harm as detailed herein is neither speculative nor conjectural, but rather is already complete as the Governor's right to disapprove changes to the branch, organization or allotment of the 103rd Fighter Wing has been nullified by the Secretary's and BRAC Commission's recommendations.

46. Additional harm is imminent as neither the President nor Congress may remove the 103rd Fighter Wing from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. The President has stated publicly that he will accept the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them and the President must act by September 23, 2005.

IRREPARABLE HARM

47. Absent a preliminary injunction, the harm as alleged herein would be irreparable. In addition to nullifying the Governor's right to disapprove changes to the organization or allotment of Connecticut's Air National Guard, the Secretary's and BRAC Commission's recommendation would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command. The proposed elimination of Connecticut's only Air National Guard Fighter Wing would immediately and negatively affect

enlistments and reenlistments in Connecticut's Air National Guard. In addition, once the BRAC Commission transmits its recommendations to the President, the ability to obtain effective judicial relief is severely diminished or eliminated.

FIRST CAUSE OF ACTION
[Declaratory and Injunctive Relief]

48. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

49. Pursuant to 32 U.S.C. § 104, no change in the branch, organization or allotment of a National Guard Unit located entirely within a State may be made without the approval of that State's Governor.

50. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut.

51. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

52. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

53. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

SECOND CAUSE OF ACTION
[Declaratory and Injunctive Relief]

54. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

55. Pursuant to 10 U.S.C. § 18238, a unit of the National Guard or Air National Guard of the United States may not be relocated or withdrawn without the consent of the governor of the State in which the National Guard unit is located.

56. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut;

57. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

58. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

59. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

THIRD CAUSE OF ACTION
[Declaratory and Injunctive Relief]

60. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

61. The Secretary and the BRAC Commission have recommended that the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard be transferred or retired.

62. The BRAC Act does not grant the BRAC Commission the authority to change how a unit is equipped or organized.

63. Any recommendation by the BRAC Commission to transfer aircraft from one unit to another or to retire aircraft unlawfully exceeds its authority as granted and delineated by the BRAC Act.

64. The Plaintiffs request a Declaratory Judgment declaring that any recommendation by the BRAC Commission to transfer or retire aircraft assigned to the 103rd Fighter Wing of the Bradley is null and void.

65. The Plaintiffs request that the Court enjoin the defendants from recommending, mandating, directing, implementing, or controlling the transfer or

retirement of the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

66. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(1) Issue an order declaring that the realignment of the 103rd Fighter Wing of the Bradley Air National Guard as proposed by Secretary Rumsfeld and the BRAC Commission without the consent of the Governor of the State of Connecticut is prohibited by federal law;

(2) Issue an order declaring that portions of the DOD and BRAC Commission Reports that recommends realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void;

(3) Enjoin Defendant Rumsfeld and any other officer or employee of DOD from mandating, implementing, overseeing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports;

(4) Enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in


their final report and recommendations to be transmitted to the President on or before September 8, 2005.

(5) Award to the Plaintiffs, pursuant to 28 U.S.C. § 2412 and any other applicable statute, the costs, fees, and other expenses incurred in prosecuting this lawsuit; and

(6) Order such other and further relief as this Court may deem appropriate.

PLAINTIFFS,
M. JODI RELL, GOVERNOR OF
CONNECTICUT, CHRISTOPHER J.
DODD, JOSEPH I. LIEBERMAN, JOHN B.
LARSON, and
THE STATE OF CONNECTICUT

BY:



RICHARD BLUMENTHAL
ATTORNEY GENERAL
Federal Bar No. ct05924
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5020
Fax: (860) 808-5347

UNITED STATES DISTRICT COURT

District of Connecticut

Governor, M. Jodi Rell, in her official capacity as Governor of the State of Connecticut, the State of Connecticut, Christopher J. Dodd and Joseph I. Lieberman in their official capacities as United States Senators and John B. Larson in his official capacity as United States Representative,

V.

SUMMONS IN A CIVIL CASE

Donald Rumsfeld, in his official capacity as Secretary of Defense, The Defense Base Closure and Realignment Commission, and Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, in their official capacities as members of the Defense Base Closure and Realignment Commission, Defendants

CASE NUMBER: #

305CV1363

AVC

TO: (Name and address of Defendant)
Harold W. Gehman, Jr.
Member
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

ATTEST:
A TRUE COPY

Nancy F. Marino
NANCY F. MARINO
CONNECTICUT MARSHAL
HARTFORD COUNTY

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEVIN F. ROWE

CLERK

[Signature]
By) DEPUTY CLERK

DATE

August 29, 2005

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CT 06510
(203) 773-2140

450 MAIN STREET
HARTFORD, CT 06103
(860) 240-3200

915 LAFAYETTE BLVD
BRIDGEPORT, CT 06604
(203) 579-5861

14 COTTAGE PLACE
WATERBURY, CT 06702
(203) 597-6311

NOTICE TO COUNSEL AND PRO SE PARTIES

THE ATTACHED CASE HAS BEEN ASSIGNED TO JUDGE ALFRED V. COVELLO WHO SITS IN HARTFORD. COUNSEL AND PRO SE PARTIES SHOULD FILE ALL FUTURE PLEADINGS OR DOCUMENTS IN THIS MATTER WITH THE CLERK'S OFFICE IN HARTFORD. ANY ATTEMPT TO FILE PLEADINGS OR OTHER DOCUMENTS RELATED TO THIS ACTION IN ANY OF THE OTHER SEATS OF COURT WILL RESULT IN THOSE PLEADINGS OR DOCUMENTS BEING REFUSED AT THE COURT OR BEING RETURNED TO YOUR OFFICE. SEE D.CONN. L. CIV. R. 3(a).

COUNSEL AND PRO SE PARTIES ARE REQUIRED TO BECOME FAMILIAR WITH AND ABIDE BY THE FEDERAL RULES OF CIVIL PROCEDURE, THE LOCAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT OF CONNECTICUT AND STANDING ORDERS REGARDING SCHEDULING IN CIVIL CASES AND THE FILING OF TRIAL MEMORANDA.

COUNSEL AND PRO SE PARTIES ARE HEREBY NOTIFIED THAT FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION, WITHIN 21 DAYS AFTER THE MOTION IS FILED, MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION. FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION TO DISMISS WITHIN 21 DAYS AFTER THE MOTION IS FILED MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION, EXCEPT WHERE THE PLEADINGS PROVIDE SUFFICIENT GROUNDS TO DENY THE MOTION. SEE D.CONN. L. CIV. R. 7(a)1

COUNSEL AND PRO SE PARTIES ARE FURTHER NOTIFIED THAT THEY ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATING TO MOTIONS FOR SUMMARY JUDGMENT AS SET FORTH IN FED. R. CIV. P. 56 AND D.CONN. L. CIV. R. 56. A PARTY MAY MOVE FOR SUMMARY JUDGMENT WHEN THAT PARTY BELIEVES THERE IS NO GENUINE ISSUE OF MATERIAL FACT REQUIRING TRIAL AND THE PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. THE MOTION MAY BE DIRECTED TOWARD ALL OR PART OF A CLAIM OR DEFENSE AND IT MAY BE MADE ON THE BASIS OF THE PLEADINGS OR OTHER PORTIONS OF THE RECORD IN THE CASE OR IT MAY BE SUPPORTED BY AFFIDAVITS AND OTHER MATERIALS OUTSIDE THE PLEADINGS.

WHEN A PARTY SEEKING SUMMARY JUDGMENT (THE "MOVING PARTY") FILES A SUPPORTING AFFIDAVIT, THE PARTY OPPOSING SUMMARY JUDGMENT MUST FILE AN AFFIDAVIT, OR OTHER DOCUMENTARY EVIDENCE, CONTRADICTING THE MOVING PARTY'S SUBMISSIONS TO DEMONSTRATE THAT THERE ARE FACTUAL ISSUES REQUIRING A TRIAL. FACTS ASSERTED IN THE AFFIDAVIT(S) OF THE MOVING PARTY WILL BE TAKEN AS TRUE IF NOT CONTROVERTED BY COUNTER-AFFIDAVITS OR OTHER DOCUMENTARY EVIDENCE.

LOCAL CIVIL RULE 56(a) REQUIRES THE PARTY SEEKING SUMMARY JUDGMENT TO FILE A DOCUMENT ENTITLED "LOCAL RULE 56(a)1 STATEMENT," WHICH SETS FORTH IN SEPARATELY NUMBERED PARAGRAPHS A CONCISE STATEMENT OF EACH MATERIAL FACT AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED. THE MATERIAL FACTS SET FORTH IN THIS STATEMENT SHALL BE DEEMED ADMITTED UNLESS CONTROVERTED BY THE "LOCAL RULE 56(a)2 STATEMENT" REQUIRED TO BE SERVED BY THE OPPOSING PARTY. THE PARAGRAPHS IN THE 56(a)2 STATEMENT SHALL CORRESPOND TO THE PARAGRAPHS IN THE 56(a)1 STATEMENT AND SHALL STATE WHETHER THE FACTS ASSERTED BY THE MOVING PARTY ARE ADMITTED OR DENIED. THE LOCAL RULE 56(a)2 STATEMENT MUST ALSO INCLUDE IN A SEPARATE SECTION A LIST OF EACH ISSUE OF MATERIAL FACT AS TO WHICH IT IS CONTENDED THERE IS A GENUINE ISSUE TO BE TRIED.

COUNSEL AND PRO SE PARTIES ARE ALERTED TO THE REQUIREMENTS OF FED. R. CIV. P. 26(f) AND LOCAL CIVIL RULE 26, WHICH REQUIRE THAT THE PARTIES CONDUCT A CASE MANAGEMENT PLANNING CONFERENCE AND PREPARE AND FILE A REPORT OF THE CONFERENCE ON FORM 26(f) WHICH APPEARS IN THE APPENDIX TO THE LOCAL RULES.

COUNSEL AND PRO SE PARTIES ARE FURTHER ADVISED THAT THEY MAY REQUEST A REFERRAL OF THEIR CASE TO A UNITED STATES MAGISTRATE JUDGE FOR DISPOSITION. SEE 28 U.S.C. 636 AND RULE 77.2 OF THE LOCAL RULES FOR UNITED STATES MAGISTRATE JUDGES.

KEVIN F. ROWE, CLERK

3050-1323-6-0

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

2005 AUG 29 P 1:06

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(e), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R. Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(e) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
Kevin F. Rowe, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 1/2/03)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ORDER RE: DISCLOSURE STATEMENT

ANY NONGOVERNMENTAL CORPORATE PARTY TO AN ACTION IN THIS COURT SHALL FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK. A PARTY SHALL FILE THE STATEMENT WITH ITS INITIAL PLEADING FILED IN THE COURT AND SHALL SUPPLEMENT THE STATEMENT WITHIN A REASONABLE TIME OF ANY CHANGE IN THE INFORMATION. COUNSEL SHALL APPEND A CERTIFICATE OF SERVICE TO THE STATEMENT IN COMPLIANCE WITH LOCAL RULE 5(b).

COUNSEL FOR PLAINTIFF OR REMOVING DEFENDANT SHALL BE RESPONSIBLE FOR SERVING A COPY OF THIS ORDER UPON ALL PARTIES TO THE ACTION.

BY ORDER OF THE COURT
KEVIN F. ROWE, CLERK

Revised 1/2/03

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE TO COUNSEL
FOR CASES REMOVED FROM SUPERIOR COURT

STANDING ORDER

All parties removing actions to this Court pursuant to 28 U.S.C. §1441 shall, no later than five (5) days after filing a notice of removal, file and serve a signed statement that sets forth the following information:

1. The date on which each defendant first received a copy of the summons and complaint in the state court action.
2. The date on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the dates set forth in item 1.
3. In diversity cases, whether any defendant who has been served is a citizen of Connecticut.
4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal has taken place at this time.
5. The name of any defendant served prior to the filing of the notice of removal who has not formally joined in the notice of removal and the reasons why any such defendant did not join in the notice of removal.

At the time a removal notice is filed with the Clerk of this Court, the removing party shall also file with the Clerk a separate notice, entitled "Notice of Pending Motions," specifying any pending motions that require action by a Judge of this Court and attaching a true and complete copy of each such motion and all supporting and opposition papers.

The removing party shall list in its certificate of service immediately below the name and address of counsel the name of the party or parties represented by said counsel and all parties appearing pro se.

NOTICE TO COUNSEL RE LOCAL RULE 5(a)

To ensure that our records are complete and to ensure that you receive notice of hearings and any court rulings, PLEASE FILE AN APPEARANCE with this office in accordance with Local Rule 5(a) of the Local Rules of Civil Procedure for the District of Connecticut.

NOTICE RE PLANNING CONFERENCE AND REPORT

Pursuant to Fed. R. Civ. P. 26 and Local Civil Rule 26(e) counsel and pro se parties must conduct a case management conference within 30 days of the appearance of the opposing party and must jointly file a planning conference report within 10 days thereafter using Form 26(f), which appears in the Appendix to the Local Rules.

Counsel for the removing defendant(s) is responsible for immediately serving a copy of this notice on all counsel of record and all unrepresented parties at their last known address.

KEVIN F. ROWE
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GOVERNOR M. JODI RELL, in her
official capacity as Governor of the
State of Connecticut, CHRISTOPHER
J. DODD, in his official capacity as
United States Senator, JOSEPH I.
LIEBERMAN in his official capacity as
United States Senator, JOHN B.
LARSON, in his official capacity as
United States Representative, and
STATE OF CONNECTICUT,
Plaintiffs,

v.

DONALD RUMSFELD,
in his official capacity as
Secretary of Defense,
THE DEFENSE BASE CLOSURE
AND REALIGNMENT COMMISSION,
and ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the
the Defense Base Closure and
Realignment and Commission, and
JAMES H. BILBRAY, PHILIP COYLE,
HAROLD W. GEHMAN, JR.,
JAMES V. VINSON, JAMES T. HILL,
LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER,
in their official capacities as members
of the Defense Base Closure and
Realignment Commission,
Defendants.

CIVIL ACTION NO.

305CV1368

AVC

2005 AUG 29 PM 12:50

FILED

August 29, 2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff State of Connecticut has a fundamental, long-standing duty to ensure the security of its citizens, including through the maintenance of a state militia.

The State's right to maintain and direct its own militia is deeply rooted in both the U.S. Constitution and its State Constitution. See U.S. Constitution Article I, Section 8, clauses 15 & 16 and Connecticut Constitution, Article Fourth, sec. 8.

2. The National Guard system is the successor to the original state militias. The National Guard and Air National Guard are dual federal and state organizations, with dual enlistments, whereby the National Guard military personnel swear allegiance to both the federal and state governments, and are simultaneously enlisted or commissioned with both the state and federal governments.

3. The plaintiff, M. Jodi Rell, Governor of the State of Connecticut, is the "captain general of the militia of the state, except when called into the service of the United States." See Connecticut Constitution, Article Fourth, sec. 8. As "commander-in-chief" of both the National Guard and Air National Guard in Connecticut, Governor Rell directs the National Guard and Air National Guard unless the Guard units are called into active federal military service. See Conn. Gen. Stat. § 27-14.

4. Plaintiff Christopher J. Dodd is a duly elected United States Senator for the State of Connecticut.

5. Plaintiff Joseph I. Lieberman is a duly elected United States Senator for the State of Connecticut.

6. Plaintiff John B. Larson is a duly elected United States Representative for the First Congressional District of Connecticut. The First Congressional District encompasses the town of Windsor Locks, Connecticut, in which the Bradley Air National Guard Station is located.

7. A unit of the Connecticut National Guard or Air National Guard may not be relocated or withdrawn without the consent of Governor Rell. See 10 U.S.C. § 18238.

8. No change in the branch, organization, or allotment of a National Guard or Air National Guard unit located entirely within a state may be made without the approval of its governor. See 32 U.S.C. § 104.

9. Defendant Secretary Donald Rumsfeld (the "Secretary" or "Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense ("DOD"). Secretary Rumsfeld is sued in his official capacity.

10. The Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (the "BRAC Act"), sets forth the process by which military bases in the United States and its territories are identified for closure or realignment.

11. Pursuant to the BRAC Act, as amended, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the defendant Defense Base Closure and Realignment Commission (the "BRAC Commission").

12. Defendant Anthony J. Principi is the Chairman of the BRAC Commission. Chairman Principi is sued in his official capacity.

13. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

14. Secretary Rumsfeld is responsible for overseeing, directing and/or implementing the closure or realignment of military bases pursuant to the BRAC process.

15. On or about May 13, 2005, Secretary Rumsfeld transmitted the DOD Base Closure and Realignment Report ("DOD Report") to the BRAC Commission.

16. The DOD Report contains the DOD's recommendations to realign or close military installations within the United States and its territories.

17. The DOD Report recommends the realignment of the Connecticut 103rd Fighter Wing located at Bradley Air National Guard Station in Windsor Locks, Connecticut. In particular, the Secretary has recommended that "[t]he A-10s assigned to the 103d Fighter Wing will be distributed to the 104th Fighter Wing, Barnes Municipal Airport Air Guard Station, MA (nine aircraft) and retirement (six aircraft)," and realigning the flying unit into the Massachusetts Air Guard. See DOD Recommendations, Sec. 3 (Air Force) at 14.

18. On August 26, 2005, the BRAC Commission adopted and approved the DOD's recommendation to realign the 103rd Fighter Wing.

19. The decision to adopt the DOD's recommendation to realign the 103rd Fighter Wing is not subject to any further review by the BRAC Commission and becomes part of its final report and recommendations to be transmitted to the President of the United States by September 8, 2005.

20. Pursuant to the BRAC Act, the President of the United States must approve or disapprove the BRAC Commission's recommendations in their entirety. He

may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing.

21. In each of the four previous BRAC processes – occurring in 1988, 1991, 1993 and 1995 – the President approved the BRAC Commission's recommendations in their entirety.

22. The President has stated publicly that he will approve the BRAC Commission's recommendations in their entirety and forward them to Congress.

23. The deadline for the President to forward to the Congress his approval of the BRAC Commission's recommendations is September 23, 2005. Congress's authority is limited to disapproving the entire slate of closures and realignments. Congress may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing. If Congress does not affirmatively act to disapprove the recommendations in their entirety within 45 legislative days of their transmittal from the President, they become law. Thereafter, Secretary Rumsfeld would be responsible for implementing all final closure and realignment decisions.

24. Congress has never disapproved the President's base closure and realignment decisions.

25. The 103rd Fighter Wing is an operational flying National Guard Unit located entirely within the State of Connecticut and is not currently activated to federal service. Initially formed in 1917, the 103rd Fighter Wing, also known as the "Flying Yankees," is made up the 103rd Operations Group, 103rd Mission Support Group, 103rd Maintenance Group and the 103rd Medical Group. Within each group are squadrons

and flights that come together to make up the more than 900 men and women of the 103rd Fighter Wing.

26. Transferring and/or retiring all of the 103rd Fighter Wing's aircraft would eliminate Connecticut's only Air National Guard fighter squadron. Transfer of these aircraft out of Connecticut would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command.

27. According to published reports, the Secretary's and BRAC Commission's recommendations would leave Connecticut as one of only two states without a single Air National Guard aircraft assigned within its borders.

28. The elimination of Connecticut's only Air National Guard Fighter Wing would have an immediate negative affect on enlistment and reenlistment in the Air National Guard in Connecticut.

29. The 103rd Fighter Wing is one of the world's premier A-10 flying units. Its members have demonstrated their excellence during missions over Bosnia and Iraq, including in Operation Iraqi Freedom, Operation Southern Watch and Operation Deny Flight.

30. The 103rd Fighter Wing is not activated to federal service. Thus, the 103rd Fighter Wing is under the command of the Governor of Connecticut. Responding to state or community emergencies is co-equal, and in no way subordinate, to the 103rd Fighter wing's federal responsibilities.

31. The proposed realignment of the 103rd Fighter Wing is a change in the branch, organization or allotment of the unit.

32. The proposed realignment of the 103rd Fighter Wing is a relocation or withdrawal of a unit of the Air National Guard.

33. In recommending the realignment of the 103rd Fighter Wing, the BRAC Commission contravened the law and the legal advice of its own counsel. By memorandum dated July 14, 2005, legal counsel to the BRAC Commission correctly recognized that the BRAC Act did not authorize the DOD or its Secretary to change the organization of or withdraw or disband a National Guard unit unless the DOD obtained the consent of the governor where the unit was located. In particular, the BRAC Commission's staff's legal analysis, which was approved by its General Counsel, concluded that

[w]here the practical result of an Air Force Recommendation would be to withdraw, disband, or change the organization of an Air National Guard Unit, the Commission may not approve such a recommendation without the consent of the Governor Concerned.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 15.

34. The recommendations by the BRAC Commission and Secretary Rumsfeld to transfer and/or retire aircraft currently assigned to the Bradley Air Guard Unit are also unlawful in that they call for action beyond the Commission's authority as delineated by the BRAC Act. The BRAC Commission's legal staff concluded that:

The Base Closure Act does not grant the Commission the authority to change how a unit is equipped or organized. Recommendations that

serve primarily to transfer aircraft from one unit to another, to retire aircraft, or to address an imbalance in the active-reserve force mix are outside the authority granted by the Act. The Commission must act to remove such provisions from its recommendations.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 10.

35. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to change the branch, organization or allotment of the 103rd Fighter Wing, or any portion thereof.

36. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to relocate or withdraw the 103rd Fighter Wing or any portion thereof.

37. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to deactivate the 103rd Fighter Wing or any portion thereof.

38. In her letter of June 14, 2005, Governor Rell informed the Secretary that she does not consent to the realignment, relocation, withdrawal, deactivation or change in the branch, organization or allotment of the 103rd Fighter Wing.

JURISDICTION

39. This is a lawsuit for declaratory and injunctive relief based upon 10 U.S.C. § 18238 and 32 U.S.C. § 104.

40. Pursuant to 28 U.S.C. §§ 1331, 1346, 2201, and 2202, this Court has jurisdiction over the parties and claims in this lawsuit.

41. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

42. Pursuant to the process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of realignments and closures of military installations. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

43. The BRAC Commission voted on August 26, 2005 to accept the Secretary's recommendation with regard to the 103rd Fighter Wing. The BRAC Commission is preparing to transmit this and its other recommendations to the President on or before September 8, 2005.

44. By voting to eliminate the 103rd Fighter Wing and transmit this recommendation to the President, the BRAC Commission, Chairman Principi and the BRAC Commissioners have finally and completely fulfilled their responsibilities under the BRAC Act with respect to the 103rd Fighter Wing. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

45. The harm as detailed herein is neither speculative nor conjectural, but rather is already complete as the Governor's right to disapprove changes to the branch, organization or allotment of the 103rd Fighter Wing has been nullified by the Secretary's and BRAC Commission's recommendations.

46. Additional harm is imminent as neither the President nor Congress may remove the 103rd Fighter Wing from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. The President has stated publicly that he will accept the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them and the President must act by September 23, 2005.

IRREPARABLE HARM

47. Absent a preliminary injunction, the harm as alleged herein would be irreparable. In addition to nullifying the Governor's right to disapprove changes to the organization or allotment of Connecticut's Air National Guard, the Secretary's and BRAC Commission's recommendation would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command. The proposed elimination of Connecticut's only Air National Guard Fighter Wing would immediately and negatively affect

enlistments and reenlistments in Connecticut's Air National Guard. In addition, once the BRAC Commission transmits its recommendations to the President, the ability to obtain effective judicial relief is severely diminished or eliminated.

FIRST CAUSE OF ACTION
[Declaratory and Injunctive Relief]

48. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

49. Pursuant to 32 U.S.C. § 104, no change in the branch, organization or allotment of a National Guard Unit located entirely within a State may be made without the approval of that State's Governor.

50. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut.

51. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

52. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

53. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

SECOND CAUSE OF ACTION
[Declaratory and Injunctive Relief]

54. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

55. Pursuant to 10 U.S.C. § 18238, a unit of the National Guard or Air National Guard of the United States may not be relocated or withdrawn without the consent of the governor of the State in which the National Guard unit is located.

56. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut;

57. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

58. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

59. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

THIRD CAUSE OF ACTION
[Declaratory and Injunctive Relief]

60. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

61. The Secretary and the BRAC Commission have recommended that the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard be transferred or retired.

62. The BRAC Act does not grant the BRAC Commission the authority to change how a unit is equipped or organized.

63. Any recommendation by the BRAC Commission to transfer aircraft from one unit to another or to retire aircraft unlawfully exceeds its authority as granted and delineated by the BRAC Act.

64. The Plaintiffs request a Declaratory Judgment declaring that any recommendation by the BRAC Commission to transfer or retire aircraft assigned to the 103rd Fighter Wing of the Bradley is null and void.

65. The Plaintiffs request that the Court enjoin the defendants from recommending, mandating, directing, implementing, or controlling the transfer or

retirement of the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

66. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(1) Issue an order declaring that the realignment of the 103rd Fighter Wing of the Bradley Air National Guard as proposed by Secretary Rumsfeld and the BRAC Commission without the consent of the Governor of the State of Connecticut is prohibited by federal law;

(2) Issue an order declaring that portions of the DOD and BRAC Commission Reports that recommends realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void;

(3) Enjoin Defendant Rumsfeld and any other officer or employee of DOD from mandating, implementing, overseeing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports;

(4) Enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in


their final report and recommendations to be transmitted to the President on or before September 8, 2005.

(5) Award to the Plaintiffs, pursuant to 28 U.S.C. § 2412 and any other applicable statute, the costs, fees, and other expenses incurred in prosecuting this lawsuit; and

(6) Order such other and further relief as this Court may deem appropriate.

PLAINTIFFS,
M. JODI RELL, GOVERNOR OF
CONNECTICUT, CHRISTOPHER J.
DODD, JOSEPH I. LIEBERMAN, JOHN B.
LARSON, and
THE STATE OF CONNECTICUT

BY:



RICHARD BLUMENTHAL
ATTORNEY GENERAL
Federal Bar No. ct05924
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5020
Fax: (860) 808-5347

UNITED STATES DISTRICT COURT

District of

Connecticut

Governor, M. Jodi Rell, in her official capacity as Governor of the State of Connecticut, the State of Connecticut, Christopher J. Dodd and Joseph I. Lieberman in their official capacities as United States Senators and John B. Larson in his official capacity as United States Representative,

V.

SUMMONS IN A CIVIL CASE

Donald Rumsfeld, in his official capacity as Secretary of Defense, The Defense Base Closure and Realignment Commission, and Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, in their official capacities as members of the Defense Base Closure and Realignment Commission, Defendants

CASE NUMBER: #

305CV1368
AVC

TO: (Name and address of Defendant)

James T. Hill
Member
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

ATTEST:
A TRUE COPY
Nancy F. Marino
NANCY F. MARINO
CONNECTICUT MARSHAL
HARTFORD COUNTY

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEVIN F ROWE

CLERK

M. Hether

DEPUTY CLERK

DATE

August 29, 2005

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CT 06510
(203) 773-2140

450 MAIN STREET
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915 LAFAYETTE BLVD
BRIDGEPORT, CT 06604
(203) 579-5861

14 COTTAGE PLACE
WATERBURY, CT 06702
(203) 597-6311

NOTICE TO COUNSEL AND PRO SE PARTIES

THE ATTACHED CASE HAS BEEN ASSIGNED TO JUDGE ALFRED V. COVELLO WHO SITS IN HARTFORD. COUNSEL AND PRO SE PARTIES SHOULD FILE ALL FUTURE PLEADINGS OR DOCUMENTS IN THIS MATTER WITH THE CLERK'S OFFICE IN HARTFORD. ANY ATTEMPT TO FILE PLEADINGS OR OTHER DOCUMENTS RELATED TO THIS ACTION IN ANY OF THE OTHER SEATS OF COURT WILL RESULT IN THOSE PLEADINGS OR DOCUMENTS BEING REFUSED AT THE COURT OR BEING RETURNED TO YOUR OFFICE. SEE D.CONN. L. CIV. R. 3(a).

COUNSEL AND PRO SE PARTIES ARE REQUIRED TO BECOME FAMILIAR WITH AND ABIDE BY THE FEDERAL RULES OF CIVIL PROCEDURE, THE LOCAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT OF CONNECTICUT AND STANDING ORDERS REGARDING SCHEDULING IN CIVIL CASES AND THE FILING OF TRIAL MEMORANDA.

COUNSEL AND PRO SE PARTIES ARE HEREBY NOTIFIED THAT FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION, WITHIN 21 DAYS AFTER THE MOTION IS FILED, MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION. FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION TO DISMISS WITHIN 21 DAYS AFTER THE MOTION IS FILED MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION, EXCEPT WHERE THE PLEADINGS PROVIDE SUFFICIENT GROUNDS TO DENY THE MOTION. SEE D.CONN. L. CIV. R. 7(a)1

COUNSEL AND PRO SE PARTIES ARE FURTHER NOTIFIED THAT THEY ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATING TO MOTIONS FOR SUMMARY JUDGMENT AS SET FORTH IN FED. R. CIV. P. 56 AND D.CONN. L. CIV. R. 56. A PARTY MAY MOVE FOR SUMMARY JUDGMENT WHEN THAT PARTY BELIEVES THERE IS NO GENUINE ISSUE OF MATERIAL FACT REQUIRING TRIAL AND THE PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. THE MOTION MAY BE DIRECTED TOWARD ALL OR PART OF A CLAIM OR DEFENSE AND IT MAY BE MADE ON THE BASIS OF THE PLEADINGS OR OTHER PORTIONS OF THE RECORD IN THE CASE OR IT MAY BE SUPPORTED BY AFFIDAVITS AND OTHER MATERIALS OUTSIDE THE PLEADINGS.

WHEN A PARTY SEEKING SUMMARY JUDGMENT (THE "MOVING PARTY") FILES A SUPPORTING AFFIDAVIT, THE PARTY OPPOSING SUMMARY JUDGMENT MUST FILE AN AFFIDAVIT, OR OTHER DOCUMENTARY EVIDENCE, CONTRADICTING THE MOVING PARTY'S SUBMISSIONS TO DEMONSTRATE THAT THERE ARE FACTUAL ISSUES REQUIRING A TRIAL. FACTS ASSERTED IN THE AFFIDAVIT(S) OF THE MOVING PARTY WILL BE TAKEN AS TRUE IF NOT CONTROVERTED BY COUNTER-AFFIDAVITS OR OTHER DOCUMENTARY EVIDENCE.

LOCAL CIVIL RULE 56(a) REQUIRES THE PARTY SEEKING SUMMARY JUDGMENT TO FILE A DOCUMENT ENTITLED "LOCAL RULE 56(a)1 STATEMENT," WHICH SETS FORTH IN SEPARATELY NUMBERED PARAGRAPHS A CONCISE STATEMENT OF EACH MATERIAL FACT AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED. THE MATERIAL FACTS SET FORTH IN THIS STATEMENT SHALL BE DEEMED ADMITTED UNLESS CONTROVERTED BY THE "LOCAL RULE 56(a)2 STATEMENT" REQUIRED TO BE SERVED BY THE OPPOSING PARTY. THE PARAGRAPHS IN THE 56(a)2 STATEMENT SHALL CORRESPOND TO THE PARAGRAPHS IN THE 56(a)1 STATEMENT AND SHALL STATE WHETHER THE FACTS ASSERTED BY THE MOVING PARTY ARE ADMITTED OR DENIED. THE LOCAL RULE 56(a)2 STATEMENT MUST ALSO INCLUDE IN A SEPARATE SECTION A LIST OF EACH ISSUE OF MATERIAL FACT AS TO WHICH IT IS CONTENDED THERE IS A GENUINE ISSUE TO BE TRIED.

COUNSEL AND PRO SE PARTIES ARE ALERTED TO THE REQUIREMENTS OF FED. R. CIV. P. 26(f) AND LOCAL CIVIL RULE 26, WHICH REQUIRE THAT THE PARTIES CONDUCT A CASE MANAGEMENT PLANNING CONFERENCE AND PREPARE AND FILE A REPORT OF THE CONFERENCE ON FORM 26(f) WHICH APPEARS IN THE APPENDIX TO THE LOCAL RULES.

COUNSEL AND PRO SE PARTIES ARE FURTHER ADVISED THAT THEY MAY REQUEST A REFERRAL OF THEIR CASE TO A UNITED STATES MAGISTRATE JUDGE FOR DISPOSITION. SEE 28 U.S.C. 636 AND RULE 77.2 OF THE LOCAL RULES FOR UNITED STATES MAGISTRATE JUDGES.

KEVIN F. ROWE, CLERK

3050-1333

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

2005 AUG 29 P 1:06

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(e), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R. Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(e) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
Kevin F. Rowe, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 1/2/03)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ORDER RE: DISCLOSURE STATEMENT

ANY NONGOVERNMENTAL CORPORATE PARTY TO AN ACTION IN THIS COURT SHALL FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK. A PARTY SHALL FILE THE STATEMENT WITH ITS INITIAL PLEADING FILED IN THE COURT AND SHALL SUPPLEMENT THE STATEMENT WITHIN A REASONABLE TIME OF ANY CHANGE IN THE INFORMATION. COUNSEL SHALL APPEND A CERTIFICATE OF SERVICE TO THE STATEMENT IN COMPLIANCE WITH LOCAL RULE 5(b).

COUNSEL FOR PLAINTIFF OR REMOVING DEFENDANT SHALL BE RESPONSIBLE FOR SERVING A COPY OF THIS ORDER UPON ALL PARTIES TO THE ACTION.

BY ORDER OF THE COURT

KEVIN F. ROWE, CLERK

Revised 1/2/03

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE TO COUNSEL
FOR CASES REMOVED FROM SUPERIOR COURT

STANDING ORDER

All parties removing actions to this Court pursuant to 28 U.S.C. §1441 shall, no later than five (5) days after filing a notice of removal, file and serve a signed statement that sets forth the following information:

1. The date on which each defendant first received a copy of the summons and complaint in the state court action.
2. The date on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the dates set forth in item 1.
3. In diversity cases, whether any defendant who has been served is a citizen of Connecticut.
4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal has taken place at this time.
5. The name of any defendant served prior to the filing of the notice of removal who has not formally joined in the notice of removal and the reasons why any such defendant did not join in the notice of removal.

At the time a removal notice is filed with the Clerk of this Court, the removing party shall also file with the Clerk a separate notice, entitled "Notice of Pending Motions," specifying any pending motions that require action by a Judge of this Court and attaching a true and complete copy of each such motion and all supporting and opposition papers.

The removing party shall list in its certificate of service immediately below the name and address of counsel the name of the party or parties represented by said counsel and all parties appearing pro se.

NOTICE TO COUNSEL RE LOCAL RULE 5(a)

To ensure that our records are complete and to ensure that you receive notice of hearings and any court rulings, PLEASE FILE AN APPEARANCE with this office in accordance with Local Rule 5(a) of the Local Rules of Civil Procedure for the District of Connecticut.

NOTICE RE PLANNING CONFERENCE AND REPORT

Pursuant to Fed. R. Civ. P. 26 and Local Civil Rule 26(e) counsel and pro se parties must conduct a case management conference within 30 days of the appearance of the opposing party and must jointly file a planning conference report within 10 days thereafter using Form 26(f), which appears in the Appendix to the Local Rules.

Counsel for the removing defendant(s) is responsible for immediately serving a copy of this notice on all counsel of record and all unrepresented parties at their last known address.

KEVIN F. ROWE
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GOVERNOR M. JODI RELL, in her
official capacity as Governor of the
State of Connecticut, CHRISTOPHER
J. DODD, in his official capacity as
United States Senator, JOSEPH I.
LIEBERMAN in his official capacity as
United States Senator, JOHN B.
LARSON, in his official capacity as
United States Representative, and
STATE OF CONNECTICUT,
Plaintiffs,

v.

DONALD RUMSFELD,
in his official capacity as
Secretary of Defense,
THE DEFENSE BASE CLOSURE
AND REALIGNMENT COMMISSION,
and ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the
the Defense Base Closure and
Realignment and Commission, and
JAMES H. BILBRAY, PHILIP COYLE,
HAROLD W. GEHMAN, JR.,
JAMES V. VINSON, JAMES T. HILL,
LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER,
in their official capacities as members
of the Defense Base Closure and
Realignment Commission,
Defendants.

CIVIL ACTION NO.

1369

AVC

2005 AUG 29 P 12:50

FILED

August 29, 2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff State of Connecticut has a fundamental, long-standing duty to ensure the security of its citizens, including through the maintenance of a state militia.

The State's right to maintain and direct its own militia is deeply rooted in both the U.S. Constitution and its State Constitution. See U.S. Constitution Article I, Section 8, clauses 15 & 16 and Connecticut Constitution, Article Fourth, sec. 8.

2. The National Guard system is the successor to the original state militias. The National Guard and Air National Guard are dual federal and state organizations, with dual enlistments, whereby the National Guard military personnel swear allegiance to both the federal and state governments, and are simultaneously enlisted or commissioned with both the state and federal governments.

3. The plaintiff, M. Jodi Rell, Governor of the State of Connecticut, is the "captain general of the militia of the state, except when called into the service of the United States." See Connecticut Constitution, Article Fourth, sec. 8. As "commander-in-chief" of both the National Guard and Air National Guard in Connecticut, Governor Rell directs the National Guard and Air National Guard unless the Guard units are called into active federal military service. See Conn. Gen. Stat. § 27-14.

4. Plaintiff Christopher J. Dodd is a duly elected United States Senator for the State of Connecticut.

5. Plaintiff Joseph I. Lieberman is a duly elected United States Senator for the State of Connecticut.

6. Plaintiff John B. Larson is a duly elected United States Representative for the First Congressional District of Connecticut. The First Congressional District encompasses the town of Windsor Locks, Connecticut, in which the Bradley Air National Guard Station is located.

7. A unit of the Connecticut National Guard or Air National Guard may not be relocated or withdrawn without the consent of Governor Rell. See 10 U.S.C. § 18238.

8. No change in the branch, organization, or allotment of a National Guard or Air National Guard unit located entirely within a state may be made without the approval of its governor. See 32 U.S.C. § 104.

9. Defendant Secretary Donald Rumsfeld (the "Secretary" or "Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense ("DOD"). Secretary Rumsfeld is sued in his official capacity.

10. The Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (the "BRAC Act"), sets forth the process by which military bases in the United States and its territories are identified for closure or realignment.

11. Pursuant to the BRAC Act, as amended, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the defendant Defense Base Closure and Realignment Commission (the "BRAC Commission").

12. Defendant Anthony J. Principi is the Chairman of the BRAC Commission. Chairman Principi is sued in his official capacity.

13. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

14. Secretary Rumsfeld is responsible for overseeing, directing and/or implementing the closure or realignment of military bases pursuant to the BRAC process.

15. On or about May 13, 2005, Secretary Rumsfeld transmitted the DOD Base Closure and Realignment Report ("DOD Report") to the BRAC Commission.

16. The DOD Report contains the DOD's recommendations to realign or close military installations within the United States and its territories.

17. The DOD Report recommends the realignment of the Connecticut 103rd Fighter Wing located at Bradley Air National Guard Station in Windsor Locks, Connecticut. In particular, the Secretary has recommended that "[t]he A-10s assigned to the 103d Fighter Wing will be distributed to the 104th Fighter Wing, Barnes Municipal Airport Air Guard Station, MA (nine aircraft) and retirement (six aircraft)," and realigning the flying unit into the Massachusetts Air Guard. See DOD Recommendations, Sec. 3 (Air Force) at 14.

18. On August 26, 2005, the BRAC Commission adopted and approved the DOD's recommendation to realign the 103rd Fighter Wing.

19. The decision to adopt the DOD's recommendation to realign the 103rd Fighter Wing is not subject to any further review by the BRAC Commission and becomes part of its final report and recommendations to be transmitted to the President of the United States by September 8, 2005.

20. Pursuant to the BRAC Act, the President of the United States must approve or disapprove the BRAC Commission's recommendations in their entirety. He

may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing.

21. In each of the four previous BRAC processes – occurring in 1988, 1991, 1993 and 1995 – the President approved the BRAC Commission's recommendations in their entirety.

22. The President has stated publicly that he will approve the BRAC Commission's recommendations in their entirety and forward them to Congress.

23. The deadline for the President to forward to the Congress his approval of the BRAC Commission's recommendations is September 23, 2005. Congress's authority is limited to disapproving the entire slate of closures and realignments. Congress may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing. If Congress does not affirmatively act to disapprove the recommendations in their entirety within 45 legislative days of their transmittal from the President, they become law. Thereafter, Secretary Rumsfeld would be responsible for implementing all final closure and realignment decisions.

24. Congress has never disapproved the President's base closure and realignment decisions.

25. The 103rd Fighter Wing is an operational flying National Guard Unit located entirely within the State of Connecticut and is not currently activated to federal service. Initially formed in 1917, the 103rd Fighter Wing, also known as the "Flying Yankees," is made up the 103rd Operations Group, 103rd Mission Support Group, 103rd Maintenance Group and the 103rd Medical Group. Within each group are squadrons

and flights that come together to make up the more than 900 men and women of the 103rd Fighter Wing.

26. Transferring and/or retiring all of the 103rd Fighter Wing's aircraft would eliminate Connecticut's only Air National Guard fighter squadron. Transfer of these aircraft out of Connecticut would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command.

27. According to published reports, the Secretary's and BRAC Commission's recommendations would leave Connecticut as one of only two states without a single Air National Guard aircraft assigned within its borders.

28. The elimination of Connecticut's only Air National Guard Fighter Wing would have an immediate negative affect on enlistment and reenlistment in the Air National Guard in Connecticut.

29. The 103rd Fighter Wing is one of the world's premier A-10 flying units. Its members have demonstrated their excellence during missions over Bosnia and Iraq, including in Operation Iraqi Freedom, Operation Southern Watch and Operation Deny Flight.

30. The 103rd Fighter Wing is not activated to federal service. Thus, the 103rd Fighter Wing is under the command of the Governor of Connecticut. Responding to state or community emergencies is co-equal, and in no way subordinate, to the 103rd Fighter wing's federal responsibilities.

31. The proposed realignment of the 103rd Fighter Wing is a change in the branch, organization or allotment of the unit.

32. The proposed realignment of the 103rd Fighter Wing is a relocation or withdrawal of a unit of the Air National Guard.

33. In recommending the realignment of the 103rd Fighter Wing, the BRAC Commission contravened the law and the legal advice of its own counsel. By memorandum dated July 14, 2005, legal counsel to the BRAC Commission correctly recognized that the BRAC Act did not authorize the DOD or its Secretary to change the organization of or withdraw or disband a National Guard unit unless the DOD obtained the consent of the governor where the unit was located. In particular, the BRAC Commission's staff's legal analysis, which was approved by its General Counsel, concluded that

[w]here the practical result of an Air Force Recommendation would be to withdraw, disband, or change the organization of an Air National Guard Unit, the Commission may not approve such a recommendation without the consent of the Governor Concerned.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 15.

34. The recommendations by the BRAC Commission and Secretary Rumsfeld to transfer and/or retire aircraft currently assigned to the Bradley Air Guard Unit are also unlawful in that they call for action beyond the Commission's authority as delineated by the BRAC Act. The BRAC Commission's legal staff concluded that:

The Base Closure Act does not grant the Commission the authority to change how a unit is equipped or organized. Recommendations that

serve primarily to transfer aircraft from one unit to another, to retire aircraft, or to address an imbalance in the active-reserve force mix are outside the authority granted by the Act. The Commission must act to remove such provisions from its recommendations.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 10.

35. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to change the branch, organization or allotment of the 103rd Fighter Wing, or any portion thereof.

36. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to relocate or withdraw the 103rd Fighter Wing or any portion thereof.

37. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to deactivate the 103rd Fighter Wing or any portion thereof.

38. In her letter of June 14, 2005, Governor Rell informed the Secretary that she does not consent to the realignment, relocation, withdrawal, deactivation or change in the branch, organization or allotment of the 103rd Fighter Wing.

JURISDICTION

39. This is a lawsuit for declaratory and injunctive relief based upon 10 U.S.C. § 18238 and 32 U.S.C. § 104.

40. Pursuant to 28 U.S.C. §§ 1331, 1346, 2201, and 2202, this Court has jurisdiction over the parties and claims in this lawsuit.

41. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

42. Pursuant to the process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of realignments and closures of military installations. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

43. The BRAC Commission voted on August 26, 2005 to accept the Secretary's recommendation with regard to the 103rd Fighter Wing. The BRAC Commission is preparing to transmit this and its other recommendations to the President on or before September 8, 2005.

44. By voting to eliminate the 103rd Fighter Wing and transmit this recommendation to the President, the BRAC Commission, Chairman Principi and the BRAC Commissioners have finally and completely fulfilled their responsibilities under the BRAC Act with respect to the 103rd Fighter Wing. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

45. The harm as detailed herein is neither speculative nor conjectural, but rather is already complete as the Governor's right to disapprove changes to the branch, organization or allotment of the 103rd Fighter Wing has been nullified by the Secretary's and BRAC Commission's recommendations.

46. Additional harm is imminent as neither the President nor Congress may remove the 103rd Fighter Wing from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. The President has stated publicly that he will accept the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them and the President must act by September 23, 2005.

IRREPARABLE HARM

47. Absent a preliminary injunction, the harm as alleged herein would be irreparable. In addition to nullifying the Governor's right to disapprove changes to the organization or allotment of Connecticut's Air National Guard, the Secretary's and BRAC Commission's recommendation would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command. The proposed elimination of Connecticut's only Air National Guard Fighter Wing would immediately and negatively affect

enlistments and reenlistments in Connecticut's Air National Guard. In addition, once the BRAC Commission transmits its recommendations to the President, the ability to obtain effective judicial relief is severely diminished or eliminated.

FIRST CAUSE OF ACTION
[Declaratory and Injunctive Relief]

48. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

49. Pursuant to 32 U.S.C. § 104, no change in the branch, organization or allotment of a National Guard Unit located entirely within a State may be made without the approval of that State's Governor.

50. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut.

51. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

52. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

53. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

SECOND CAUSE OF ACTION
[Declaratory and Injunctive Relief]

54. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

55. Pursuant to 10 U.S.C. § 18238, a unit of the National Guard or Air National Guard of the United States may not be relocated or withdrawn without the consent of the governor of the State in which the National Guard unit is located.

56. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut;

57. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

58. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

59. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

THIRD CAUSE OF ACTION
[Declaratory and Injunctive Relief]

60. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

61. The Secretary and the BRAC Commission have recommended that the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard be transferred or retired.

62. The BRAC Act does not grant the BRAC Commission the authority to change how a unit is equipped or organized.

63. Any recommendation by the BRAC Commission to transfer aircraft from one unit to another or to retire aircraft unlawfully exceeds its authority as granted and delineated by the BRAC Act.

64. The Plaintiffs request a Declaratory Judgment declaring that any recommendation by the BRAC Commission to transfer or retire aircraft assigned to the 103rd Fighter Wing of the Bradley is null and void.

65. The Plaintiffs request that the Court enjoin the defendants from recommending, mandating, directing, implementing, or controlling the transfer or

retirement of the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

66. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(1) Issue an order declaring that the realignment of the 103rd Fighter Wing of the Bradley Air National Guard as proposed by Secretary Rumsfeld and the BRAC Commission without the consent of the Governor of the State of Connecticut is prohibited by federal law;

(2) Issue an order declaring that portions of the DOD and BRAC Commission Reports that recommends realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void;

(3) Enjoin Defendant Rumsfeld and any other officer or employee of DOD from mandating, implementing, overseeing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports;

(4) Enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in


their final report and recommendations to be transmitted to the President on or before September 8, 2005.

(5) Award to the Plaintiffs, pursuant to 28 U.S.C. § 2412 and any other applicable statute, the costs, fees, and other expenses incurred in prosecuting this lawsuit; and

(6) Order such other and further relief as this Court may deem appropriate.

PLAINTIFFS,
M. JODI RELL, GOVERNOR OF
CONNECTICUT, CHRISTOPHER J.
DODD, JOSEPH I. LIEBERMAN, JOHN B.
LARSON, and
THE STATE OF CONNECTICUT

BY:



RICHARD BLUMENTHAL
ATTORNEY GENERAL
Federal Bar No. ct05924
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5020
Fax: (860) 808-5347

UNITED STATES DISTRICT COURT

District of

Connecticut

Governor, M. Jodi Rell, in her official capacity as Governor of the State of Connecticut, the State of Connecticut, Christopher J. Dodd and Joseph I. Lieberman in their official capacities as United States Senators and John B. Larson in his official capacity as United States Representative,

V.

SUMMONS IN A CIVIL CASE

Donald Rumsfeld, in his official capacity as Secretary of Defense, The Defense Base Closure and Realignment Commission, and Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, in their official capacities as members of the Defense Base Closure and Realignment Commission, Defendants

CASE NUMBER: #

305CV1383
AVC

TO: (Name and address of Defendant)

Lloyd W. Newton

Member

2005 Defense Base Closure and Realignment Commission

2521 S. Clark St., Ste. 600

Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

ATTEST:
A TRUE COPY

Nancy F. Marino
NANCY F. MARINO
CONNECTICUT MARSHAL
HARTFORD COUNTY

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEVIN F. ROWE

CLERK

(By) DEPUTY CLERK

DATE

August 29, 2005

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CT 06510
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(203) 597-6311

NOTICE TO COUNSEL AND PRO SE PARTIES

THE ATTACHED CASE HAS BEEN ASSIGNED TO JUDGE ALFRED V. COVELLO WHO SITS IN HARTFORD. COUNSEL AND PRO SE PARTIES SHOULD FILE ALL FUTURE PLEADINGS OR DOCUMENTS IN THIS MATTER WITH THE CLERK'S OFFICE IN HARTFORD. ANY ATTEMPT TO FILE PLEADINGS OR OTHER DOCUMENTS RELATED TO THIS ACTION IN ANY OF THE OTHER SEATS OF COURT WILL RESULT IN THOSE PLEADINGS OR DOCUMENTS BEING REFUSED AT THE COURT OR BEING RETURNED TO YOUR OFFICE. SEE D.CONN. L. CIV. R. 3(a).

COUNSEL AND PRO SE PARTIES ARE REQUIRED TO BECOME FAMILIAR WITH AND ABIDE BY THE FEDERAL RULES OF CIVIL PROCEDURE, THE LOCAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT OF CONNECTICUT AND STANDING ORDERS REGARDING SCHEDULING IN CIVIL CASES AND THE FILING OF TRIAL MEMORANDA.

COUNSEL AND PRO SE PARTIES ARE HEREBY NOTIFIED THAT FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION, WITHIN 21 DAYS AFTER THE MOTION IS FILED, MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION. FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION TO DISMISS WITHIN 21 DAYS AFTER THE MOTION IS FILED MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION, EXCEPT WHERE THE PLEADINGS PROVIDE SUFFICIENT GROUNDS TO DENY THE MOTION. SEE D.CONN. L. CIV. R. 7(a)1

COUNSEL AND PRO SE PARTIES ARE FURTHER NOTIFIED THAT THEY ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATING TO MOTIONS FOR SUMMARY JUDGMENT AS SET FORTH IN FED. R. CIV. P. 56 AND D.CONN. L. CIV. R. 56. A PARTY MAY MOVE FOR SUMMARY JUDGMENT WHEN THAT PARTY BELIEVES THERE IS NO GENUINE ISSUE OF MATERIAL FACT REQUIRING TRIAL AND THE PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. THE MOTION MAY BE DIRECTED TOWARD ALL OR PART OF A CLAIM OR DEFENSE AND IT MAY BE MADE ON THE BASIS OF THE PLEADINGS OR OTHER PORTIONS OF THE RECORD IN THE CASE OR IT MAY BE SUPPORTED BY AFFIDAVITS AND OTHER MATERIALS OUTSIDE THE PLEADINGS.

WHEN A PARTY SEEKING SUMMARY JUDGMENT (THE "MOVING PARTY") FILES A SUPPORTING AFFIDAVIT, THE PARTY OPPOSING SUMMARY JUDGMENT MUST FILE AN AFFIDAVIT, OR OTHER DOCUMENTARY EVIDENCE, CONTRADICTING THE MOVING PARTY'S SUBMISSIONS TO DEMONSTRATE THAT THERE ARE FACTUAL ISSUES REQUIRING A TRIAL. FACTS ASSERTED IN THE AFFIDAVIT(S) OF THE MOVING PARTY WILL BE TAKEN AS TRUE IF NOT CONTROVERTED BY COUNTER-AFFIDAVITS OR OTHER DOCUMENTARY EVIDENCE.

LOCAL CIVIL RULE 56(a) REQUIRES THE PARTY SEEKING SUMMARY JUDGMENT TO FILE A DOCUMENT ENTITLED "LOCAL RULE 56(a)1 STATEMENT," WHICH SETS FORTH IN SEPARATELY NUMBERED PARAGRAPHS A CONCISE STATEMENT OF EACH MATERIAL FACT AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED. THE MATERIAL FACTS SET FORTH IN THIS STATEMENT SHALL BE DEEMED ADMITTED UNLESS CONTROVERTED BY THE "LOCAL RULE 56(a)2 STATEMENT" REQUIRED TO BE SERVED BY THE OPPOSING PARTY. THE PARAGRAPHS IN THE 56(a)2 STATEMENT SHALL CORRESPOND TO THE PARAGRAPHS IN THE 56(a)1 STATEMENT AND SHALL STATE WHETHER THE FACTS ASSERTED BY THE MOVING PARTY ARE ADMITTED OR DENIED. THE LOCAL RULE 56(a)2 STATEMENT MUST ALSO INCLUDE IN A SEPARATE SECTION A LIST OF EACH ISSUE OF MATERIAL FACT AS TO WHICH IT IS CONTENDED THERE IS A GENUINE ISSUE TO BE TRIED.

COUNSEL AND PRO SE PARTIES ARE ALERTED TO THE REQUIREMENTS OF FED. R. CIV. P. 26(f) AND LOCAL CIVIL RULE 26, WHICH REQUIRE THAT THE PARTIES CONDUCT A CASE MANAGEMENT PLANNING CONFERENCE AND PREPARE AND FILE A REPORT OF THE CONFERENCE ON FORM 26(f) WHICH APPEARS IN THE APPENDIX TO THE LOCAL RULES.

COUNSEL AND PRO SE PARTIES ARE FURTHER ADVISED THAT THEY MAY REQUEST A REFERRAL OF THEIR CASE TO A UNITED STATES MAGISTRATE JUDGE FOR DISPOSITION. SEE 28 U.S.C. 636 AND RULE 77.2 OF THE LOCAL RULES FOR UNITED STATES MAGISTRATE JUDGES.

KEVIN F. ROWE, CLERK

305011863

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

2005 AUG 29 P 1:06

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(e), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R. Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(e) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
Kevin F. Rowe, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 1/2/03)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ORDER RE: DISCLOSURE STATEMENT

ANY NONGOVERNMENTAL CORPORATE PARTY TO AN ACTION IN THIS COURT SHALL FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK. A PARTY SHALL FILE THE STATEMENT WITH ITS INITIAL PLEADING FILED IN THE COURT AND SHALL SUPPLEMENT THE STATEMENT WITHIN A REASONABLE TIME OF ANY CHANGE IN THE INFORMATION. COUNSEL SHALL APPEND A CERTIFICATE OF SERVICE TO THE STATEMENT IN COMPLIANCE WITH LOCAL RULE 5(b).

COUNSEL FOR PLAINTIFF OR REMOVING DEFENDANT SHALL BE RESPONSIBLE FOR SERVING A COPY OF THIS ORDER UPON ALL PARTIES TO THE ACTION.

BY ORDER OF THE COURT
KEVIN F. ROWE, CLERK

Revised 1/2/03

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE TO COUNSEL
FOR CASES REMOVED FROM SUPERIOR COURT

STANDING ORDER

All parties removing actions to this Court pursuant to 28 U.S.C. §1441 shall, no later than five (5) days after filing a notice of removal, file and serve a signed statement that sets forth the following information:

1. The date on which each defendant first received a copy of the summons and complaint in the state court action.
2. The date on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the dates set forth in item 1.
3. In diversity cases, whether any defendant who has been served is a citizen of Connecticut.
4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal has taken place at this time.
5. The name of any defendant served prior to the filing of the notice of removal who has not formally joined in the notice of removal and the reasons why any such defendant did not join in the notice of removal.

At the time a removal notice is filed with the Clerk of this Court, the removing party shall also file with the Clerk a separate notice, entitled "Notice of Pending Motions," specifying any pending motions that require action by a Judge of this Court and attaching a true and complete copy of each such motion and all supporting and opposition papers.

The removing party shall list in its certificate of service immediately below the name and address of counsel the name of the party or parties represented by said counsel and all parties appearing pro se.

NOTICE TO COUNSEL RE LOCAL RULE 5(a)

To ensure that our records are complete and to ensure that you receive notice of hearings and any court rulings, PLEASE FILE AN APPEARANCE with this office in accordance with Local Rule 5(a) of the Local Rules of Civil Procedure for the District of Connecticut.

NOTICE RE PLANNING CONFERENCE AND REPORT

Pursuant to Fed. R. Civ. P. 26 and Local Civil Rule 26(e) counsel and pro se parties must conduct a case management conference within 30 days of the appearance of the opposing party and must jointly file a planning conference report within 10 days thereafter using Form 26(f), which appears in the Appendix to the Local Rules.

Counsel for the removing defendant(s) is responsible for immediately serving a copy of this notice on all counsel of record and all unrepresented parties at their last known address.

KEVIN F. ROWE
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GOVERNOR M. JODI RELL, in her
official capacity as Governor of the
State of Connecticut, CHRISTOPHER
J. DODD, in his official capacity as
United States Senator, JOSEPH I.
LIEBERMAN in his official capacity as
United States Senator, JOHN B.
LARSON, in his official capacity as
United States Representative, and
STATE OF CONNECTICUT,
Plaintiffs,

v.

DONALD RUMSFELD,
in his official capacity as
Secretary of Defense,
THE DEFENSE BASE CLOSURE
AND REALIGNMENT COMMISSION,
and ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the
the Defense Base Closure and
Realignment and Commission, and
JAMES H. BILBRAY, PHILIP COYLE,
HAROLD W. GEHMAN, JR.,
JAMES V. VINSON, JAMES T. HILL,
LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER,
in their official capacities as members
of the Defense Base Closure and
Realignment Commission,
Defendants.

CIVIL ACTION NO.

2005-11-1389

AVC

2005 AUG 29 P 12:50

FILED

August 29, 2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff State of Connecticut has a fundamental, long-standing duty to ensure the security of its citizens, including through the maintenance of a state militia.

The State's right to maintain and direct its own militia is deeply rooted in both the U.S. Constitution and its State Constitution. See U.S. Constitution Article I, Section 8, clauses 15 & 16 and Connecticut Constitution, Article Fourth, sec. 8.

2. The National Guard system is the successor to the original state militias. The National Guard and Air National Guard are dual federal and state organizations, with dual enlistments, whereby the National Guard military personnel swear allegiance to both the federal and state governments, and are simultaneously enlisted or commissioned with both the state and federal governments.

3. The plaintiff, M. Jodi Rell, Governor of the State of Connecticut, is the "captain general of the militia of the state, except when called into the service of the United States." See Connecticut Constitution, Article Fourth, sec. 8. As "commander-in-chief" of both the National Guard and Air National Guard in Connecticut, Governor Rell directs the National Guard and Air National Guard unless the Guard units are called into active federal military service. See Conn. Gen. Stat. § 27-14.

4. Plaintiff Christopher J. Dodd is a duly elected United States Senator for the State of Connecticut.

5. Plaintiff Joseph I. Lieberman is a duly elected United States Senator for the State of Connecticut.

6. Plaintiff John B. Larson is a duly elected United States Representative for the First Congressional District of Connecticut. The First Congressional District encompasses the town of Windsor Locks, Connecticut, in which the Bradley Air National Guard Station is located.

7. A unit of the Connecticut National Guard or Air National Guard may not be relocated or withdrawn without the consent of Governor Rell. See 10 U.S.C. § 18238.

8. No change in the branch, organization, or allotment of a National Guard or Air National Guard unit located entirely within a state may be made without the approval of its governor. See 32 U.S.C. § 104.

9. Defendant Secretary Donald Rumsfeld (the "Secretary" or "Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense ("DOD"). Secretary Rumsfeld is sued in his official capacity.

10. The Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (the "BRAC Act"), sets forth the process by which military bases in the United States and its territories are identified for closure or realignment.

11. Pursuant to the BRAC Act, as amended, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the defendant Defense Base Closure and Realignment Commission (the "BRAC Commission").

12. Defendant Anthony J. Principi is the Chairman of the BRAC Commission. Chairman Principi is sued in his official capacity.

13. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

14. Secretary Rumsfeld is responsible for overseeing, directing and/or implementing the closure or realignment of military bases pursuant to the BRAC process.

15. On or about May 13, 2005, Secretary Rumsfeld transmitted the DOD Base Closure and Realignment Report ("DOD Report") to the BRAC Commission.

16. The DOD Report contains the DOD's recommendations to realign or close military installations within the United States and its territories.

17. The DOD Report recommends the realignment of the Connecticut 103rd Fighter Wing located at Bradley Air National Guard Station in Windsor Locks, Connecticut. In particular, the Secretary has recommended that "[t]he A-10s assigned to the 103d Fighter Wing will be distributed to the 104th Fighter Wing, Barnes Municipal Airport Air Guard Station, MA (nine aircraft) and retirement (six aircraft)," and realigning the flying unit into the Massachusetts Air Guard. See DOD Recommendations, Sec. 3 (Air Force) at 14.

18. On August 26, 2005, the BRAC Commission adopted and approved the DOD's recommendation to realign the 103rd Fighter Wing.

19. The decision to adopt the DOD's recommendation to realign the 103rd Fighter Wing is not subject to any further review by the BRAC Commission and becomes part of its final report and recommendations to be transmitted to the President of the United States by September 8, 2005.

20. Pursuant to the BRAC Act, the President of the United States must approve or disapprove the BRAC Commission's recommendations in their entirety. He

may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing.

21. In each of the four previous BRAC processes – occurring in 1988, 1991, 1993 and 1995 – the President approved the BRAC Commission's recommendations in their entirety.

22. The President has stated publicly that he will approve the BRAC Commission's recommendations in their entirety and forward them to Congress.

23. The deadline for the President to forward to the Congress his approval of the BRAC Commission's recommendations is September 23, 2005. Congress's authority is limited to disapproving the entire slate of closures and realignments. Congress may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing. If Congress does not affirmatively act to disapprove the recommendations in their entirety within 45 legislative days of their transmittal from the President, they become law. Thereafter, Secretary Rumsfeld would be responsible for implementing all final closure and realignment decisions.

24. Congress has never disapproved the President's base closure and realignment decisions.

25. The 103rd Fighter Wing is an operational flying National Guard Unit located entirely within the State of Connecticut and is not currently activated to federal service. Initially formed in 1917, the 103rd Fighter Wing, also known as the "Flying Yankees," is made up the 103rd Operations Group, 103rd Mission Support Group, 103rd Maintenance Group and the 103rd Medical Group. Within each group are squadrons

and flights that come together to make up the more than 900 men and women of the 103rd Fighter Wing.

26. Transferring and/or retiring all of the 103rd Fighter Wing's aircraft would eliminate Connecticut's only Air National Guard fighter squadron. Transfer of these aircraft out of Connecticut would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command.

27. According to published reports, the Secretary's and BRAC Commission's recommendations would leave Connecticut as one of only two states without a single Air National Guard aircraft assigned within its borders.

28. The elimination of Connecticut's only Air National Guard Fighter Wing would have an immediate negative affect on enlistment and reenlistment in the Air National Guard in Connecticut.

29. The 103rd Fighter Wing is one of the world's premier A-10 flying units. Its members have demonstrated their excellence during missions over Bosnia and Iraq, including in Operation Iraqi Freedom, Operation Southern Watch and Operation Deny Flight.

30. The 103rd Fighter Wing is not activated to federal service. Thus, the 103rd Fighter Wing is under the command of the Governor of Connecticut. Responding to state or community emergencies is co-equal, and in no way subordinate, to the 103rd Fighter wing's federal responsibilities.

31. The proposed realignment of the 103rd Fighter Wing is a change in the branch, organization or allotment of the unit.

32. The proposed realignment of the 103rd Fighter Wing is a relocation or withdrawal of a unit of the Air National Guard.

33. In recommending the realignment of the 103rd Fighter Wing, the BRAC Commission contravened the law and the legal advice of its own counsel. By memorandum dated July 14, 2005, legal counsel to the BRAC Commission correctly recognized that the BRAC Act did not authorize the DOD or its Secretary to change the organization of or withdraw or disband a National Guard unit unless the DOD obtained the consent of the governor where the unit was located. In particular, the BRAC Commission's staff's legal analysis, which was approved by its General Counsel, concluded that

[w]here the practical result of an Air Force Recommendation would be to withdraw, disband, or change the organization of an Air National Guard Unit, the Commission may not approve such a recommendation without the consent of the Governor Concerned.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 15.

34. The recommendations by the BRAC Commission and Secretary Rumsfeld to transfer and/or retire aircraft currently assigned to the Bradley Air Guard Unit are also unlawful in that they call for action beyond the Commission's authority as delineated by the BRAC Act. The BRAC Commission's legal staff concluded that:

The Base Closure Act does not grant the Commission the authority to change how a unit is equipped or organized. Recommendations that

serve primarily to transfer aircraft from one unit to another, to retire aircraft, or to address an imbalance in the active-reserve force mix are outside the authority granted by the Act. The Commission must act to remove such provisions from its recommendations.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 10.

35. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to change the branch, organization or allotment of the 103rd Fighter Wing, or any portion thereof.

36. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to relocate or withdraw the 103rd Fighter Wing or any portion thereof.

37. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to deactivate the 103rd Fighter Wing or any portion thereof.

38. In her letter of June 14, 2005, Governor Rell informed the Secretary that she does not consent to the realignment, relocation, withdrawal, deactivation or change in the branch, organization or allotment of the 103rd Fighter Wing.

JURISDICTION

39. This is a lawsuit for declaratory and injunctive relief based upon 10 U.S.C. § 18238 and 32 U.S.C. § 104.

40. Pursuant to 28 U.S.C. §§ 1331, 1346, 2201, and 2202, this Court has jurisdiction over the parties and claims in this lawsuit.

41. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

42. Pursuant to the process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of realignments and closures of military installations. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

43. The BRAC Commission voted on August 26, 2005 to accept the Secretary's recommendation with regard to the 103rd Fighter Wing. The BRAC Commission is preparing to transmit this and its other recommendations to the President on or before September 8, 2005.

44. By voting to eliminate the 103rd Fighter Wing and transmit this recommendation to the President, the BRAC Commission, Chairman Principi and the BRAC Commissioners have finally and completely fulfilled their responsibilities under the BRAC Act with respect to the 103rd Fighter Wing. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

45. The harm as detailed herein is neither speculative nor conjectural, but rather is already complete as the Governor's right to disapprove changes to the branch, organization or allotment of the 103rd Fighter Wing has been nullified by the Secretary's and BRAC Commission's recommendations.

46. Additional harm is imminent as neither the President nor Congress may remove the 103rd Fighter Wing from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. The President has stated publicly that he will accept the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them and the President must act by September 23, 2005.

IRREPARABLE HARM

47. Absent a preliminary injunction, the harm as alleged herein would be irreparable. In addition to nullifying the Governor's right to disapprove changes to the organization or allotment of Connecticut's Air National Guard, the Secretary's and BRAC Commission's recommendation would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command. The proposed elimination of Connecticut's only Air National Guard Fighter Wing would immediately and negatively affect

enlistments and reenlistments in Connecticut's Air National Guard. In addition, once the BRAC Commission transmits its recommendations to the President, the ability to obtain effective judicial relief is severely diminished or eliminated.

FIRST CAUSE OF ACTION
[Declaratory and Injunctive Relief]

48. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

49. Pursuant to 32 U.S.C. § 104, no change in the branch, organization or allotment of a National Guard Unit located entirely within a State may be made without the approval of that State's Governor.

50. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut.

51. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

52. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

53. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

SECOND CAUSE OF ACTION
[Declaratory and Injunctive Relief]

54. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

55. Pursuant to 10 U.S.C. § 18238, a unit of the National Guard or Air National Guard of the United States may not be relocated or withdrawn without the consent of the governor of the State in which the National Guard unit is located.

56. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut;

57. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

58. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

59. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

THIRD CAUSE OF ACTION
[Declaratory and Injunctive Relief]

60. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

61. The Secretary and the BRAC Commission have recommended that the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard be transferred or retired.

62. The BRAC Act does not grant the BRAC Commission the authority to change how a unit is equipped or organized.

63. Any recommendation by the BRAC Commission to transfer aircraft from one unit to another or to retire aircraft unlawfully exceeds its authority as granted and delineated by the BRAC Act.

64. The Plaintiffs request a Declaratory Judgment declaring that any recommendation by the BRAC Commission to transfer or retire aircraft assigned to the 103rd Fighter Wing of the Bradley is null and void.

65. The Plaintiffs request that the Court enjoin the defendants from recommending, mandating, directing, implementing, or controlling the transfer or

retirement of the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

66. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(1) Issue an order declaring that the realignment of the 103rd Fighter Wing of the Bradley Air National Guard as proposed by Secretary Rumsfeld and the BRAC Commission without the consent of the Governor of the State of Connecticut is prohibited by federal law;

(2) Issue an order declaring that portions of the DOD and BRAC Commission Reports that recommends realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void;

(3) Enjoin Defendant Rumsfeld and any other officer or employee of DOD from mandating, implementing, overseeing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports;

(4) Enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in


their final report and recommendations to be transmitted to the President on or before September 8, 2005.

(5) Award to the Plaintiffs, pursuant to 28 U.S.C. § 2412 and any other applicable statute, the costs, fees, and other expenses incurred in prosecuting this lawsuit; and

(6) Order such other and further relief as this Court may deem appropriate.

PLAINTIFFS,
M. JODI RELL, GOVERNOR OF
CONNECTICUT, CHRISTOPHER J.
DODD, JOSEPH I. LIEBERMAN, JOHN B.
LARSON, and
THE STATE OF CONNECTICUT

BY:



RICHARD BLUMENTHAL
ATTORNEY GENERAL
Federal Bar No. ct05924
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5020
Fax: (860) 808-5347

UNITED STATES DISTRICT COURT

District of

Connecticut

Governor, M. Jodi Rell, in her official capacity as Governor of the State of Connecticut, the State of Connecticut, Christopher J. Dodd and Joseph I. Lieberman in their official capacities as United States Senators and John B. Larson in his official capacity as United States Representative,

V.

SUMMONS IN A CIVIL CASE

Donald Rumsfeld, in his official capacity as Secretary of Defense, The Defense Base Closure and Realignment Commission, and Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, in their official capacities as members of the Defense Base Closure and Realignment Commission, Defendants

CASE NUMBER: #

3050V1363
AVC

TO: (Name and address of Defendant)

Anthony J. Principi
Chairman
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

ATTEST:
A TRUE COPY
Nancy F. Marino
NANCY F. MARINO
CONNECTICUT MARSHAL
HARTFORD COUNTY

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEVIN F. ROWE

CLERK

(By) DEPUTY CLERK

DATE

August 29, 2005

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CT 06510
(203) 773-2140

450 MAIN STREET
HARTFORD, CT 06103
(860) 240-3200

915 LAFAYETTE BLVD
BRIDGEPORT, CT 06604
(203) 579-5861

14 COTTAGE PLACE
WATERBURY, CT 06702
(203) 597-6311

NOTICE TO COUNSEL AND PRO SE PARTIES

THE ATTACHED CASE HAS BEEN ASSIGNED TO JUDGE ALFRED V. COVELLO WHO SITS IN HARTFORD. COUNSEL AND PRO SE PARTIES SHOULD FILE ALL FUTURE PLEADINGS OR DOCUMENTS IN THIS MATTER WITH THE CLERK'S OFFICE IN HARTFORD. ANY ATTEMPT TO FILE PLEADINGS OR OTHER DOCUMENTS RELATED TO THIS ACTION IN ANY OF THE OTHER SEATS OF COURT WILL RESULT IN THOSE PLEADINGS OR DOCUMENTS BEING REFUSED AT THE COURT OR BEING RETURNED TO YOUR OFFICE. SEE D.CONN. L. CIV. R. 3(a).

COUNSEL AND PRO SE PARTIES ARE REQUIRED TO BECOME FAMILIAR WITH AND ABIDE BY THE FEDERAL RULES OF CIVIL PROCEDURE, THE LOCAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT OF CONNECTICUT AND STANDING ORDERS REGARDING SCHEDULING IN CIVIL CASES AND THE FILING OF TRIAL MEMORANDA.

COUNSEL AND PRO SE PARTIES ARE HEREBY NOTIFIED THAT FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION, WITHIN 21 DAYS AFTER THE MOTION IS FILED, MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION. FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION TO DISMISS WITHIN 21 DAYS AFTER THE MOTION IS FILED MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION, EXCEPT WHERE THE PLEADINGS PROVIDE SUFFICIENT GROUNDS TO DENY THE MOTION. SEE D.CONN. L. CIV. R. 7(a)1

COUNSEL AND PRO SE PARTIES ARE FURTHER NOTIFIED THAT THEY ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATING TO MOTIONS FOR SUMMARY JUDGMENT AS SET FORTH IN FED. R. CIV. P. 56 AND D.CONN. L. CIV. R. 56. A PARTY MAY MOVE FOR SUMMARY JUDGMENT WHEN THAT PARTY BELIEVES THERE IS NO GENUINE ISSUE OF MATERIAL FACT REQUIRING TRIAL AND THE PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. THE MOTION MAY BE DIRECTED TOWARD ALL OR PART OF A CLAIM OR DEFENSE AND IT MAY BE MADE ON THE BASIS OF THE PLEADINGS OR OTHER PORTIONS OF THE RECORD IN THE CASE OR IT MAY BE SUPPORTED BY AFFIDAVITS AND OTHER MATERIALS OUTSIDE THE PLEADINGS.

WHEN A PARTY SEEKING SUMMARY JUDGMENT (THE "MOVING PARTY") FILES A SUPPORTING AFFIDAVIT, THE PARTY OPPOSING SUMMARY JUDGMENT MUST FILE AN AFFIDAVIT, OR OTHER DOCUMENTARY EVIDENCE, CONTRADICTING THE MOVING PARTY'S SUBMISSIONS TO DEMONSTRATE THAT THERE ARE FACTUAL ISSUES REQUIRING A TRIAL. FACTS ASSERTED IN THE AFFIDAVIT(S) OF THE MOVING PARTY WILL BE TAKEN AS TRUE IF NOT CONTROVERTED BY COUNTER-AFFIDAVITS OR OTHER DOCUMENTARY EVIDENCE.

LOCAL CIVIL RULE 56(a) REQUIRES THE PARTY SEEKING SUMMARY JUDGMENT TO FILE A DOCUMENT ENTITLED "LOCAL RULE 56(a)1 STATEMENT," WHICH SETS FORTH IN SEPARATELY NUMBERED PARAGRAPHS A CONCISE STATEMENT OF EACH MATERIAL FACT AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED. THE MATERIAL FACTS SET FORTH IN THIS STATEMENT SHALL BE DEEMED ADMITTED UNLESS CONTROVERTED BY THE "LOCAL RULE 56(a)2 STATEMENT" REQUIRED TO BE SERVED BY THE OPPOSING PARTY. THE PARAGRAPHS IN THE 56(a)2 STATEMENT SHALL CORRESPOND TO THE PARAGRAPHS IN THE 56(a)1 STATEMENT AND SHALL STATE WHETHER THE FACTS ASSERTED BY THE MOVING PARTY ARE ADMITTED OR DENIED. THE LOCAL RULE 56(a)2 STATEMENT MUST ALSO INCLUDE IN A SEPARATE SECTION A LIST OF EACH ISSUE OF MATERIAL FACT AS TO WHICH IT IS CONTENDED THERE IS A GENUINE ISSUE TO BE TRIED.

COUNSEL AND PRO SE PARTIES ARE ALERTED TO THE REQUIREMENTS OF FED. R. CIV. P. 26(f) AND LOCAL CIVIL RULE 26, WHICH REQUIRE THAT THE PARTIES CONDUCT A CASE MANAGEMENT PLANNING CONFERENCE AND PREPARE AND FILE A REPORT OF THE CONFERENCE ON FORM 26(f) WHICH APPEARS IN THE APPENDIX TO THE LOCAL RULES.

COUNSEL AND PRO SE PARTIES ARE FURTHER ADVISED THAT THEY MAY REQUEST A REFERRAL OF THEIR CASE TO A UNITED STATES MAGISTRATE JUDGE FOR DISPOSITION. SEE 28 U.S.C. 636 AND RULE 77.2 OF THE LOCAL RULES FOR UNITED STATES MAGISTRATE JUDGES.

KEVIN F. ROWE, CLERK

30501333-600

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

2005 AUG 29 P 1:06

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(e), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R. Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(e) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
Kevin F. Rowe, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 1/2/03)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ORDER RE: DISCLOSURE STATEMENT

ANY NONGOVERNMENTAL CORPORATE PARTY TO AN ACTION IN THIS COURT SHALL FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK. A PARTY SHALL FILE THE STATEMENT WITH ITS INITIAL PLEADING FILED IN THE COURT AND SHALL SUPPLEMENT THE STATEMENT WITHIN A REASONABLE TIME OF ANY CHANGE IN THE INFORMATION. COUNSEL SHALL APPEND A CERTIFICATE OF SERVICE TO THE STATEMENT IN COMPLIANCE WITH LOCAL RULE 5(b).

COUNSEL FOR PLAINTIFF OR REMOVING DEFENDANT SHALL BE RESPONSIBLE FOR SERVING A COPY OF THIS ORDER UPON ALL PARTIES TO THE ACTION.

BY ORDER OF THE COURT
KEVIN F. ROWE, CLERK

Revised 1/2/03

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE TO COUNSEL
FOR CASES REMOVED FROM SUPERIOR COURT

STANDING ORDER

All parties removing actions to this Court pursuant to 28 U.S.C. §1441 shall, no later than five (5) days after filing a notice of removal, file and serve a signed statement that sets forth the following information:

1. The date on which each defendant first received a copy of the summons and complaint in the state court action.
2. The date on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the dates set forth in item 1.
3. In diversity cases, whether any defendant who has been served is a citizen of Connecticut.
4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal has taken place at this time.
5. The name of any defendant served prior to the filing of the notice of removal who has not formally joined in the notice of removal and the reasons why any such defendant did not join in the notice of removal.

At the time a removal notice is filed with the Clerk of this Court, the removing party shall also file with the Clerk a separate notice, entitled "Notice of Pending Motions," specifying any pending motions that require action by a Judge of this Court and attaching a true and complete copy of each such motion and all supporting and opposition papers.

The removing party shall list in its certificate of service immediately below the name and address of counsel the name of the party or parties represented by said counsel and all parties appearing pro se.

NOTICE TO COUNSEL RE LOCAL RULE 5(a)

To ensure that our records are complete and to ensure that you receive notice of hearings and any court rulings, PLEASE FILE AN APPEARANCE with this office in accordance with Local Rule 5(a) of the Local Rules of Civil Procedure for the District of Connecticut.

NOTICE RE PLANNING CONFERENCE AND REPORT

Pursuant to Fed. R. Civ. P. 26 and Local Civil Rule 26(e) counsel and pro se parties must conduct a case management conference within 30 days of the appearance of the opposing party and must jointly file a planning conference report within 10 days thereafter using Form 26(f), which appears in the Appendix to the Local Rules.

Counsel for the removing defendant(s) is responsible for immediately serving a copy of this notice on all counsel of record and all unrepresented parties at their last known address.

KEVIN F. ROWE
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GOVERNOR M. JODI RELL, in her
official capacity as Governor of the
State of Connecticut, CHRISTOPHER
J. DODD, in his official capacity as
United States Senator, JOSEPH I.
LIEBERMAN in his official capacity as
United States Senator, JOHN B.
LARSON, in his official capacity as
United States Representative, and
STATE OF CONNECTICUT,
Plaintiffs,

v.

DONALD RUMSFELD,
in his official capacity as
Secretary of Defense,
THE DEFENSE BASE CLOSURE
AND REALIGNMENT COMMISSION,
and ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the
the Defense Base Closure and
Realignment and Commission, and
JAMES H. BILBRAY, PHILIP COYLE,
HAROLD W. GEHMAN, JR.,
JAMES V. VINSON, JAMES T. HILL,
LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER,
in their official capacities as members
of the Defense Base Closure and
Realignment Commission,
Defendants.

CIVIL ACTION NO.

05 CIV 288

AVC

2005 AUG 29 P 12:50

FILED

August 29, 2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff State of Connecticut has a fundamental, long-standing duty to ensure the security of its citizens, including through the maintenance of a state militia.

The State's right to maintain and direct its own militia is deeply rooted in both the U.S. Constitution and its State Constitution. See U.S. Constitution Article I, Section 8, clauses 15 & 16 and Connecticut Constitution, Article Fourth, sec. 8.

2. The National Guard system is the successor to the original state militias. The National Guard and Air National Guard are dual federal and state organizations, with dual enlistments, whereby the National Guard military personnel swear allegiance to both the federal and state governments, and are simultaneously enlisted or commissioned with both the state and federal governments.

3. The plaintiff, M. Jodi Rell, Governor of the State of Connecticut, is the "captain general of the militia of the state, except when called into the service of the United States." See Connecticut Constitution, Article Fourth, sec. 8. As "commander-in-chief" of both the National Guard and Air National Guard in Connecticut, Governor Rell directs the National Guard and Air National Guard unless the Guard units are called into active federal military service. See Conn. Gen. Stat. § 27-14.

4. Plaintiff Christopher J. Dodd is a duly elected United States Senator for the State of Connecticut.

5. Plaintiff Joseph I. Lieberman is a duly elected United States Senator for the State of Connecticut.

6. Plaintiff John B. Larson is a duly elected United States Representative for the First Congressional District of Connecticut. The First Congressional District encompasses the town of Windsor Locks, Connecticut, in which the Bradley Air National Guard Station is located.

7. A unit of the Connecticut National Guard or Air National Guard may not be relocated or withdrawn without the consent of Governor Rell. See 10 U.S.C. § 18238.

8. No change in the branch, organization, or allotment of a National Guard or Air National Guard unit located entirely within a state may be made without the approval of its governor. See 32 U.S.C. § 104.

9. Defendant Secretary Donald Rumsfeld (the "Secretary" or "Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense ("DOD"). Secretary Rumsfeld is sued in his official capacity.

10. The Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (the "BRAC Act"), sets forth the process by which military bases in the United States and its territories are identified for closure or realignment.

11. Pursuant to the BRAC Act, as amended, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the defendant Defense Base Closure and Realignment Commission (the "BRAC Commission").

12. Defendant Anthony J. Principi is the Chairman of the BRAC Commission. Chairman Principi is sued in his official capacity.

13. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

14. Secretary Rumsfeld is responsible for overseeing, directing and/or implementing the closure or realignment of military bases pursuant to the BRAC process.

15. On or about May 13, 2005, Secretary Rumsfeld transmitted the DOD Base Closure and Realignment Report ("DOD Report") to the BRAC Commission.

16. The DOD Report contains the DOD's recommendations to realign or close military installations within the United States and its territories.

17. The DOD Report recommends the realignment of the Connecticut 103rd Fighter Wing located at Bradley Air National Guard Station in Windsor Locks, Connecticut. In particular, the Secretary has recommended that "[t]he A-10s assigned to the 103d Fighter Wing will be distributed to the 104th Fighter Wing, Barnes Municipal Airport Air Guard Station, MA (nine aircraft) and retirement (six aircraft)," and realigning the flying unit into the Massachusetts Air Guard. See DOD Recommendations, Sec. 3 (Air Force) at 14.

18. On August 26, 2005, the BRAC Commission adopted and approved the DOD's recommendation to realign the 103rd Fighter Wing.

19. The decision to adopt the DOD's recommendation to realign the 103rd Fighter Wing is not subject to any further review by the BRAC Commission and becomes part of its final report and recommendations to be transmitted to the President of the United States by September 8, 2005.

20. Pursuant to the BRAC Act, the President of the United States must approve or disapprove the BRAC Commission's recommendations in their entirety. He

may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing.

21. In each of the four previous BRAC processes – occurring in 1988, 1991, 1993 and 1995 – the President approved the BRAC Commission's recommendations in their entirety.

22. The President has stated publicly that he will approve the BRAC Commission's recommendations in their entirety and forward them to Congress.

23. The deadline for the President to forward to the Congress his approval of the BRAC Commission's recommendations is September 23, 2005. Congress's authority is limited to disapproving the entire slate of closures and realignments. Congress may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing. If Congress does not affirmatively act to disapprove the recommendations in their entirety within 45 legislative days of their transmittal from the President, they become law. Thereafter, Secretary Rumsfeld would be responsible for implementing all final closure and realignment decisions.

24. Congress has never disapproved the President's base closure and realignment decisions.

25. The 103rd Fighter Wing is an operational flying National Guard Unit located entirely within the State of Connecticut and is not currently activated to federal service. Initially formed in 1917, the 103rd Fighter Wing, also known as the "Flying Yankees," is made up the 103rd Operations Group, 103rd Mission Support Group, 103rd Maintenance Group and the 103rd Medical Group. Within each group are squadrons

and flights that come together to make up the more than 900 men and women of the 103rd Fighter Wing.

26. Transferring and/or retiring all of the 103rd Fighter Wing's aircraft would eliminate Connecticut's only Air National Guard fighter squadron. Transfer of these aircraft out of Connecticut would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command.

27. According to published reports, the Secretary's and BRAC Commission's recommendations would leave Connecticut as one of only two states without a single Air National Guard aircraft assigned within its borders.

28. The elimination of Connecticut's only Air National Guard Fighter Wing would have an immediate negative affect on enlistment and reenlistment in the Air National Guard in Connecticut.

29. The 103rd Fighter Wing is one of the world's premier A-10 flying units. Its members have demonstrated their excellence during missions over Bosnia and Iraq, including in Operation Iraqi Freedom, Operation Southern Watch and Operation Deny Flight.

30. The 103rd Fighter Wing is not activated to federal service. Thus, the 103rd Fighter Wing is under the command of the Governor of Connecticut. Responding to state or community emergencies is co-equal, and in no way subordinate, to the 103rd Fighter wing's federal responsibilities.

31. The proposed realignment of the 103rd Fighter Wing is a change in the branch, organization or allotment of the unit.

32. The proposed realignment of the 103rd Fighter Wing is a relocation or withdrawal of a unit of the Air National Guard.

33. In recommending the realignment of the 103rd Fighter Wing, the BRAC Commission contravened the law and the legal advice of its own counsel. By memorandum dated July 14, 2005, legal counsel to the BRAC Commission correctly recognized that the BRAC Act did not authorize the DOD or its Secretary to change the organization of or withdraw or disband a National Guard unit unless the DOD obtained the consent of the governor where the unit was located. In particular, the BRAC Commission's staff's legal analysis, which was approved by its General Counsel, concluded that

[w]here the practical result of an Air Force Recommendation would be to withdraw, disband, or change the organization of an Air National Guard Unit, the Commission may not approve such a recommendation without the consent of the Governor Concerned.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 15.

34. The recommendations by the BRAC Commission and Secretary Rumsfeld to transfer and/or retire aircraft currently assigned to the Bradley Air Guard Unit are also unlawful in that they call for action beyond the Commission's authority as delineated by the BRAC Act. The BRAC Commission's legal staff concluded that:

The Base Closure Act does not grant the Commission the authority to change how a unit is equipped or organized. Recommendations that

serve primarily to transfer aircraft from one unit to another, to retire aircraft, or to address an imbalance in the active-reserve force mix are outside the authority granted by the Act. The Commission must act to remove such provisions from its recommendations.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 10.

35. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to change the branch, organization or allotment of the 103rd Fighter Wing, or any portion thereof.

36. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to relocate or withdraw the 103rd Fighter Wing or any portion thereof.

37. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to deactivate the 103rd Fighter Wing or any portion thereof.

38. In her letter of June 14, 2005, Governor Rell informed the Secretary that she does not consent to the realignment, relocation, withdrawal, deactivation or change in the branch, organization or allotment of the 103rd Fighter Wing.

JURISDICTION

39. This is a lawsuit for declaratory and injunctive relief based upon 10 U.S.C. § 18238 and 32 U.S.C. § 104.

40. Pursuant to 28 U.S.C. §§ 1331, 1346, 2201, and 2202, this Court has jurisdiction over the parties and claims in this lawsuit.

41. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

42. Pursuant to the process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of realignments and closures of military installations. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

43. The BRAC Commission voted on August 26, 2005 to accept the Secretary's recommendation with regard to the 103rd Fighter Wing. The BRAC Commission is preparing to transmit this and its other recommendations to the President on or before September 8, 2005.

44. By voting to eliminate the 103rd Fighter Wing and transmit this recommendation to the President, the BRAC Commission, Chairman Principi and the BRAC Commissioners have finally and completely fulfilled their responsibilities under the BRAC Act with respect to the 103rd Fighter Wing. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

45. The harm as detailed herein is neither speculative nor conjectural, but rather is already complete as the Governor's right to disapprove changes to the branch, organization or allotment of the 103rd Fighter Wing has been nullified by the Secretary's and BRAC Commission's recommendations.

46. Additional harm is imminent as neither the President nor Congress may remove the 103rd Fighter Wing from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. The President has stated publicly that he will accept the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them and the President must act by September 23, 2005.

IRREPARABLE HARM

47. Absent a preliminary injunction, the harm as alleged herein would be irreparable. In addition to nullifying the Governor's right to disapprove changes to the organization or allotment of Connecticut's Air National Guard, the Secretary's and BRAC Commission's recommendation would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command. The proposed elimination of Connecticut's only Air National Guard Fighter Wing would immediately and negatively affect

enlistments and reenlistments in Connecticut's Air National Guard. In addition, once the BRAC Commission transmits its recommendations to the President, the ability to obtain effective judicial relief is severely diminished or eliminated.

FIRST CAUSE OF ACTION
[Declaratory and Injunctive Relief]

48. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

49. Pursuant to 32 U.S.C. § 104, no change in the branch, organization or allotment of a National Guard Unit located entirely within a State may be made without the approval of that State's Governor.

50. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut.

51. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

52. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

53. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

SECOND CAUSE OF ACTION
[Declaratory and Injunctive Relief]

54. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

55. Pursuant to 10 U.S.C. § 18238, a unit of the National Guard or Air National Guard of the United States may not be relocated or withdrawn without the consent of the governor of the State in which the National Guard unit is located.

56. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut;

57. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

58. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

59. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

THIRD CAUSE OF ACTION
[Declaratory and Injunctive Relief]

60. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

61. The Secretary and the BRAC Commission have recommended that the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard be transferred or retired.

62. The BRAC Act does not grant the BRAC Commission the authority to change how a unit is equipped or organized.

63. Any recommendation by the BRAC Commission to transfer aircraft from one unit to another or to retire aircraft unlawfully exceeds its authority as granted and delineated by the BRAC Act.

64. The Plaintiffs request a Declaratory Judgment declaring that any recommendation by the BRAC Commission to transfer or retire aircraft assigned to the 103rd Fighter Wing of the Bradley is null and void.

65. The Plaintiffs request that the Court enjoin the defendants from recommending, mandating, directing, implementing, or controlling the transfer or

retirement of the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

66. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(1) Issue an order declaring that the realignment of the 103rd Fighter Wing of the Bradley Air National Guard as proposed by Secretary Rumsfeld and the BRAC Commission without the consent of the Governor of the State of Connecticut is prohibited by federal law;

(2) Issue an order declaring that portions of the DOD and BRAC Commission Reports that recommends realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void;

(3) Enjoin Defendant Rumsfeld and any other officer or employee of DOD from mandating, implementing, overseeing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports;

(4) Enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in


their final report and recommendations to be transmitted to the President on or before September 8, 2005.

(5) Award to the Plaintiffs, pursuant to 28 U.S.C. § 2412 and any other applicable statute, the costs, fees, and other expenses incurred in prosecuting this lawsuit; and

(6) Order such other and further relief as this Court may deem appropriate.

PLAINTIFFS,
M. JODI RELL, GOVERNOR OF
CONNECTICUT, CHRISTOPHER J.
DODD, JOSEPH I. LIEBERMAN, JOHN B.
LARSON, and
THE STATE OF CONNECTICUT

BY:



RICHARD BLUMENTHAL
ATTORNEY GENERAL
Federal Bar No. ct05924
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5020
Fax: (860) 808-5347

UNITED STATES DISTRICT COURT

District of

Connecticut

Governor, M. Jodi Rell, in her official capacity as Governor of the State of Connecticut, the State of Connecticut, Christopher J. Dodd and Joseph I. Lieberman in their official capacities as United States Senators and John B. Larson in his official capacity as United States Representative,

V.

SUMMONS IN A CIVIL CASE

Donald Rumsfeld, in his official capacity as Secretary of Defense, The Defense Base Closure and Realignment Commission, and Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission, and James H. Bilbray, Phillip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, in their official capacities as members of the Defense Base Closure and Realignment Commission, Defendants

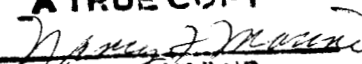
CASE NUMBER: #

305CV1389
AVC

TO: (Name and address of Defendant)
Samuel K. Skinner
Member
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

ATTEST:
A TRUE COPY

NANCY J. M. [unclear]
CLERK
HARTFORD COUNTY

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEVIN E. ROWE

CLERK

(By) DEPUTY CLERK

DATE

August 29, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GOVERNOR M. JODI RELL, in her
official capacity as Governor of the
State of Connecticut, CHRISTOPHER
J. DODD, in his official capacity as
United States Senator, JOSEPH I.
LIEBERMAN in his official capacity as
United States Senator, JOHN B.
LARSON, in his official capacity as
United States Representative, and
STATE OF CONNECTICUT,
Plaintiffs,

v.

DONALD RUMSFELD,
in his official capacity as
Secretary of Defense,
THE DEFENSE BASE CLOSURE
AND REALIGNMENT COMMISSION,
and ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the
the Defense Base Closure and
Realignment and Commission, and
JAMES H. BILBRAY, PHILIP COYLE,
HAROLD W. GEHMAN, JR.,
JAMES V. VINSON, JAMES T. HILL,
LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER,
in their official capacities as members
of the Defense Base Closure and
Realignment Commission,
Defendants.

CIVIL ACTION NO.

305-1368

2005 AUG 29 P 12:50

FILED

August 29, 2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff State of Connecticut has a fundamental, long-standing duty to ensure the security of its citizens, including through the maintenance of a state militia.

The State's right to maintain and direct its own militia is deeply rooted in both the U.S. Constitution and its State Constitution. See U.S. Constitution Article I, Section 8, clauses 15 & 16 and Connecticut Constitution, Article Fourth, sec. 8.

2. The National Guard system is the successor to the original state militias. The National Guard and Air National Guard are dual federal and state organizations, with dual enlistments, whereby the National Guard military personnel swear allegiance to both the federal and state governments, and are simultaneously enlisted or commissioned with both the state and federal governments.

3. The plaintiff, M. Jodi Rell, Governor of the State of Connecticut, is the "captain general of the militia of the state, except when called into the service of the United States." See Connecticut Constitution, Article Fourth, sec. 8. As "commander-in-chief" of both the National Guard and Air National Guard in Connecticut, Governor Rell directs the National Guard and Air National Guard unless the Guard units are called into active federal military service. See Conn. Gen. Stat. § 27-14.

4. Plaintiff Christopher J. Dodd is a duly elected United States Senator for the State of Connecticut.

5. Plaintiff Joseph I. Lieberman is a duly elected United States Senator for the State of Connecticut.

6. Plaintiff John B. Larson is a duly elected United States Representative for the First Congressional District of Connecticut. The First Congressional District encompasses the town of Windsor Locks, Connecticut, in which the Bradley Air National Guard Station is located.

7. A unit of the Connecticut National Guard or Air National Guard may not be relocated or withdrawn without the consent of Governor Rell. See 10 U.S.C. § 18238.

8. No change in the branch, organization, or allotment of a National Guard or Air National Guard unit located entirely within a state may be made without the approval of its governor. See 32 U.S.C. § 104.

9. Defendant Secretary Donald Rumsfeld (the "Secretary" or "Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense ("DOD"). Secretary Rumsfeld is sued in his official capacity.

10. The Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (the "BRAC Act"), sets forth the process by which military bases in the United States and its territories are identified for closure or realignment.

11. Pursuant to the BRAC Act, as amended, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the defendant Defense Base Closure and Realignment Commission (the "BRAC Commission").

12. Defendant Anthony J. Principi is the Chairman of the BRAC Commission. Chairman Principi is sued in his official capacity.

13. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

14. Secretary Rumsfeld is responsible for overseeing, directing and/or implementing the closure or realignment of military bases pursuant to the BRAC process.

15. On or about May 13, 2005, Secretary Rumsfeld transmitted the DOD Base Closure and Realignment Report ("DOD Report") to the BRAC Commission.

16. The DOD Report contains the DOD's recommendations to realign or close military installations within the United States and its territories.

17. The DOD Report recommends the realignment of the Connecticut 103rd Fighter Wing located at Bradley Air National Guard Station in Windsor Locks, Connecticut. In particular, the Secretary has recommended that "[t]he A-10s assigned to the 103d Fighter Wing will be distributed to the 104th Fighter Wing, Barnes Municipal Airport Air Guard Station, MA (nine aircraft) and retirement (six aircraft)," and realigning the flying unit into the Massachusetts Air Guard. See DOD Recommendations, Sec. 3 (Air Force) at 14.

18. On August 26, 2005, the BRAC Commission adopted and approved the DOD's recommendation to realign the 103rd Fighter Wing.

19. The decision to adopt the DOD's recommendation to realign the 103rd Fighter Wing is not subject to any further review by the BRAC Commission and becomes part of its final report and recommendations to be transmitted to the President of the United States by September 8, 2005.

20. Pursuant to the BRAC Act, the President of the United States must approve or disapprove the BRAC Commission's recommendations in their entirety. He

may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing.

21. In each of the four previous BRAC processes – occurring in 1988, 1991, 1993 and 1995 – the President approved the BRAC Commission's recommendations in their entirety.

22. The President has stated publicly that he will approve the BRAC Commission's recommendations in their entirety and forward them to Congress.

23. The deadline for the President to forward to the Congress his approval of the BRAC Commission's recommendations is September 23, 2005. Congress's authority is limited to disapproving the entire slate of closures and realignments. Congress may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing. If Congress does not affirmatively act to disapprove the recommendations in their entirety within 45 legislative days of their transmittal from the President, they become law. Thereafter, Secretary Rumsfeld would be responsible for implementing all final closure and realignment decisions.

24. Congress has never disapproved the President's base closure and realignment decisions.

25. The 103rd Fighter Wing is an operational flying National Guard Unit located entirely within the State of Connecticut and is not currently activated to federal service. Initially formed in 1917, the 103rd Fighter Wing, also known as the "Flying Yankees," is made up the 103rd Operations Group, 103rd Mission Support Group, 103rd Maintenance Group and the 103rd Medical Group. Within each group are squadrons

and flights that come together to make up the more than 900 men and women of the 103rd Fighter Wing.

26. Transferring and/or retiring all of the 103rd Fighter Wing's aircraft would eliminate Connecticut's only Air National Guard fighter squadron. Transfer of these aircraft out of Connecticut would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command.

27. According to published reports, the Secretary's and BRAC Commission's recommendations would leave Connecticut as one of only two states without a single Air National Guard aircraft assigned within its borders.

28. The elimination of Connecticut's only Air National Guard Fighter Wing would have an immediate negative affect on enlistment and reenlistment in the Air National Guard in Connecticut.

29. The 103rd Fighter Wing is one of the world's premier A-10 flying units. Its members have demonstrated their excellence during missions over Bosnia and Iraq, including in Operation Iraqi Freedom, Operation Southern Watch and Operation Deny Flight.

30. The 103rd Fighter Wing is not activated to federal service. Thus, the 103rd Fighter Wing is under the command of the Governor of Connecticut. Responding to state or community emergencies is co-equal, and in no way subordinate, to the 103rd Fighter wing's federal responsibilities.

31. The proposed realignment of the 103rd Fighter Wing is a change in the branch, organization or allotment of the unit.

32. The proposed realignment of the 103rd Fighter Wing is a relocation or withdrawal of a unit of the Air National Guard.

33. In recommending the realignment of the 103rd Fighter Wing, the BRAC Commission contravened the law and the legal advice of its own counsel. By memorandum dated July 14, 2005, legal counsel to the BRAC Commission correctly recognized that the BRAC Act did not authorize the DOD or its Secretary to change the organization of or withdraw or disband a National Guard unit unless the DOD obtained the consent of the governor where the unit was located. In particular, the BRAC Commission's staff's legal analysis, which was approved by its General Counsel, concluded that

[w]here the practical result of an Air Force Recommendation would be to withdraw, disband, or change the organization of an Air National Guard Unit, the Commission may not approve such a recommendation without the consent of the Governor Concerned.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 15.

34. The recommendations by the BRAC Commission and Secretary Rumsfeld to transfer and/or retire aircraft currently assigned to the Bradley Air Guard Unit are also unlawful in that they call for action beyond the Commission's authority as delineated by the BRAC Act. The BRAC Commission's legal staff concluded that:

The Base Closure Act does not grant the Commission the authority to change how a unit is equipped or organized. Recommendations that

serve primarily to transfer aircraft from one unit to another, to retire aircraft, or to address an imbalance in the active-reserve force mix are outside the authority granted by the Act. The Commission must act to remove such provisions from its recommendations.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 10.

35. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to change the branch, organization or allotment of the 103rd Fighter Wing, or any portion thereof.

36. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to relocate or withdraw the 103rd Fighter Wing or any portion thereof.

37. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to deactivate the 103rd Fighter Wing or any portion thereof.

38. In her letter of June 14, 2005, Governor Rell informed the Secretary that she does not consent to the realignment, relocation, withdrawal, deactivation or change in the branch, organization or allotment of the 103rd Fighter Wing.

JURISDICTION

39. This is a lawsuit for declaratory and injunctive relief based upon 10 U.S.C. § 18238 and 32 U.S.C. § 104.

40. Pursuant to 28 U.S.C. §§ 1331, 1346, 2201, and 2202, this Court has jurisdiction over the parties and claims in this lawsuit.

41. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

42. Pursuant to the process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of realignments and closures of military installations. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

43. The BRAC Commission voted on August 26, 2005 to accept the Secretary's recommendation with regard to the 103rd Fighter Wing. The BRAC Commission is preparing to transmit this and its other recommendations to the President on or before September 8, 2005.

44. By voting to eliminate the 103rd Fighter Wing and transmit this recommendation to the President, the BRAC Commission, Chairman Principi and the BRAC Commissioners have finally and completely fulfilled their responsibilities under the BRAC Act with respect to the 103rd Fighter Wing. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

45. The harm as detailed herein is neither speculative nor conjectural, but rather is already complete as the Governor's right to disapprove changes to the branch, organization or allotment of the 103rd Fighter Wing has been nullified by the Secretary's and BRAC Commission's recommendations.

46. Additional harm is imminent as neither the President nor Congress may remove the 103rd Fighter Wing from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. The President has stated publicly that he will accept the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them and the President must act by September 23, 2005.

IRREPARABLE HARM

47. Absent a preliminary injunction, the harm as alleged herein would be irreparable. In addition to nullifying the Governor's right to disapprove changes to the organization or allotment of Connecticut's Air National Guard, the Secretary's and BRAC Commission's recommendation would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command. The proposed elimination of Connecticut's only Air National Guard Fighter Wing would immediately and negatively affect

enlistments and reenlistments in Connecticut's Air National Guard. In addition, once the BRAC Commission transmits its recommendations to the President, the ability to obtain effective judicial relief is severely diminished or eliminated.

FIRST CAUSE OF ACTION
[Declaratory and Injunctive Relief]

48. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

49. Pursuant to 32 U.S.C. § 104, no change in the branch, organization or allotment of a National Guard Unit located entirely within a State may be made without the approval of that State's Governor.

50. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut.

51. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

52. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

53. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

SECOND CAUSE OF ACTION
[Declaratory and Injunctive Relief]

54. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

55. Pursuant to 10 U.S.C. § 18238, a unit of the National Guard or Air National Guard of the United States may not be relocated or withdrawn without the consent of the governor of the State in which the National Guard unit is located.

56. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut;

57. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

58. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

59. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

THIRD CAUSE OF ACTION
[Declaratory and Injunctive Relief]

60. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

61. The Secretary and the BRAC Commission have recommended that the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard be transferred or retired.

62. The BRAC Act does not grant the BRAC Commission the authority to change how a unit is equipped or organized.

63. Any recommendation by the BRAC Commission to transfer aircraft from one unit to another or to retire aircraft unlawfully exceeds its authority as granted and delineated by the BRAC Act.

64. The Plaintiffs request a Declaratory Judgment declaring that any recommendation by the BRAC Commission to transfer or retire aircraft assigned to the 103rd Fighter Wing of the Bradley is null and void.

65. The Plaintiffs request that the Court enjoin the defendants from recommending, mandating, directing, implementing, or controlling the transfer or

retirement of the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

66. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(1) Issue an order declaring that the realignment of the 103rd Fighter Wing of the Bradley Air National Guard as proposed by Secretary Rumsfeld and the BRAC Commission without the consent of the Governor of the State of Connecticut is prohibited by federal law;

(2) Issue an order declaring that portions of the DOD and BRAC Commission Reports that recommends realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void;

(3) Enjoin Defendant Rumsfeld and any other officer or employee of DOD from mandating, implementing, overseeing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports;

(4) Enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in


their final report and recommendations to be transmitted to the President on or before September 8, 2005.

(5) Award to the Plaintiffs, pursuant to 28 U.S.C. § 2412 and any other applicable statute, the costs, fees, and other expenses incurred in prosecuting this lawsuit; and

(6) Order such other and further relief as this Court may deem appropriate.

PLAINTIFFS,
M. JODI RELL, GOVERNOR OF
CONNECTICUT, CHRISTOPHER J.
DODD, JOSEPH I. LIEBERMAN, JOHN B.
LARSON, and
THE STATE OF CONNECTICUT

BY:



RICHARD BLUMENTHAL
ATTORNEY GENERAL
Federal Bar No. ct05924
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Tel: (860) 808-5020
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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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WATERBURY, CT 06702
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NOTICE TO COUNSEL AND PRO SE PARTIES

THE ATTACHED CASE HAS BEEN ASSIGNED TO JUDGE ALFRED V. COVELLO WHO SITS IN HARTFORD. COUNSEL AND PRO SE PARTIES SHOULD FILE ALL FUTURE PLEADINGS OR DOCUMENTS IN THIS MATTER WITH THE CLERK'S OFFICE IN HARTFORD. ANY ATTEMPT TO FILE PLEADINGS OR OTHER DOCUMENTS RELATED TO THIS ACTION IN ANY OF THE OTHER SEATS OF COURT WILL RESULT IN THOSE PLEADINGS OR DOCUMENTS BEING REFUSED AT THE COURT OR BEING RETURNED TO YOUR OFFICE. SEE D.CONN. L. CIV. R. 3(a).

COUNSEL AND PRO SE PARTIES ARE REQUIRED TO BECOME FAMILIAR WITH AND ABIDE BY THE FEDERAL RULES OF CIVIL PROCEDURE, THE LOCAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT OF CONNECTICUT AND STANDING ORDERS REGARDING SCHEDULING IN CIVIL CASES AND THE FILING OF TRIAL MEMORANDA.

COUNSEL AND PRO SE PARTIES ARE HEREBY NOTIFIED THAT FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION, WITHIN 21 DAYS AFTER THE MOTION IS FILED, MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION. FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION TO DISMISS WITHIN 21 DAYS AFTER THE MOTION IS FILED MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION, EXCEPT WHERE THE PLEADINGS PROVIDE SUFFICIENT GROUNDS TO DENY THE MOTION. SEE D.CONN. L. CIV. R. 7(a)1

COUNSEL AND PRO SE PARTIES ARE FURTHER NOTIFIED THAT THEY ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATING TO MOTIONS FOR SUMMARY JUDGMENT AS SET FORTH IN FED. R. CIV. P. 56 AND D.CONN. L. CIV. R. 56. A PARTY MAY MOVE FOR SUMMARY JUDGMENT WHEN THAT PARTY BELIEVES THERE IS NO GENUINE ISSUE OF MATERIAL FACT REQUIRING TRIAL AND THE PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. THE MOTION MAY BE DIRECTED TOWARD ALL OR PART OF A CLAIM OR DEFENSE AND IT MAY BE MADE ON THE BASIS OF THE PLEADINGS OR OTHER PORTIONS OF THE RECORD IN THE CASE OR IT MAY BE SUPPORTED BY AFFIDAVITS AND OTHER MATERIALS OUTSIDE THE PLEADINGS.

WHEN A PARTY SEEKING SUMMARY JUDGMENT (THE "MOVING PARTY") FILES A SUPPORTING AFFIDAVIT, THE PARTY OPPOSING SUMMARY JUDGMENT MUST FILE AN AFFIDAVIT, OR OTHER DOCUMENTARY EVIDENCE, CONTRADICTING THE MOVING PARTY'S SUBMISSIONS TO DEMONSTRATE THAT THERE ARE FACTUAL ISSUES REQUIRING A TRIAL. FACTS ASSERTED IN THE AFFIDAVIT(S) OF THE MOVING PARTY WILL BE TAKEN AS TRUE IF NOT CONTROVERTED BY COUNTER-AFFIDAVITS OR OTHER DOCUMENTARY EVIDENCE.

LOCAL CIVIL RULE 56(a) REQUIRES THE PARTY SEEKING SUMMARY JUDGMENT TO FILE A DOCUMENT ENTITLED "LOCAL RULE 56(a)1 STATEMENT," WHICH SETS FORTH IN SEPARATELY NUMBERED PARAGRAPHS A CONCISE STATEMENT OF EACH MATERIAL FACT AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED. THE MATERIAL FACTS SET FORTH IN THIS STATEMENT SHALL BE DEEMED ADMITTED UNLESS CONTROVERTED BY THE "LOCAL RULE 56(a)2 STATEMENT" REQUIRED TO BE SERVED BY THE OPPOSING PARTY. THE PARAGRAPHS IN THE 56(a)2 STATEMENT SHALL CORRESPOND TO THE PARAGRAPHS IN THE 56(a)1 STATEMENT AND SHALL STATE WHETHER THE FACTS ASSERTED BY THE MOVING PARTY ARE ADMITTED OR DENIED. THE LOCAL RULE 56(a)2 STATEMENT MUST ALSO INCLUDE IN A SEPARATE SECTION A LIST OF EACH ISSUE OF MATERIAL FACT AS TO WHICH IT IS CONTENDED THERE IS A GENUINE ISSUE TO BE TRIED.

COUNSEL AND PRO SE PARTIES ARE ALERTED TO THE REQUIREMENTS OF FED. R. CIV. P. 26(f) AND LOCAL CIVIL RULE 26, WHICH REQUIRE THAT THE PARTIES CONDUCT A CASE MANAGEMENT PLANNING CONFERENCE AND PREPARE AND FILE A REPORT OF THE CONFERENCE ON FORM 26(f) WHICH APPEARS IN THE APPENDIX TO THE LOCAL RULES.

COUNSEL AND PRO SE PARTIES ARE FURTHER ADVISED THAT THEY MAY REQUEST A REFERRAL OF THEIR CASE TO A UNITED STATES MAGISTRATE JUDGE FOR DISPOSITION. SEE 28 U.S.C. 636 AND RULE 77.2 OF THE LOCAL RULES FOR UNITED STATES MAGISTRATE JUDGES.

KEVIN F. ROWE, CLERK

3050-1383-630

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

2005 MAR 29 P 1:06

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(e), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R. Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(e) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
Kevin F. Rowe, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 1/2/03)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ORDER RE: DISCLOSURE STATEMENT

ANY NONGOVERNMENTAL CORPORATE PARTY TO AN ACTION IN THIS COURT SHALL FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK. A PARTY SHALL FILE THE STATEMENT WITH ITS INITIAL PLEADING FILED IN THE COURT AND SHALL SUPPLEMENT THE STATEMENT WITHIN A REASONABLE TIME OF ANY CHANGE IN THE INFORMATION. COUNSEL SHALL APPEND A CERTIFICATE OF SERVICE TO THE STATEMENT IN COMPLIANCE WITH LOCAL RULE 5(b).

COUNSEL FOR PLAINTIFF OR REMOVING DEFENDANT SHALL BE RESPONSIBLE FOR SERVING A COPY OF THIS ORDER UPON ALL PARTIES TO THE ACTION.

BY ORDER OF THE COURT
KEVIN F. ROWE, CLERK

Revised 1/2/03

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE TO COUNSEL
FOR CASES REMOVED FROM SUPERIOR COURT

STANDING ORDER

All parties removing actions to this Court pursuant to 28 U.S.C. §1441 shall, no later than five (5) days after filing a notice of removal, file and serve a signed statement that sets forth the following information:

1. The date on which each defendant first received a copy of the summons and complaint in the state court action.
2. The date on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the dates set forth in item 1.
3. In diversity cases, whether any defendant who has been served is a citizen of Connecticut.
4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal has taken place at this time.
5. The name of any defendant served prior to the filing of the notice of removal who has not formally joined in the notice of removal and the reasons why any such defendant did not join in the notice of removal.

At the time a removal notice is filed with the Clerk of this Court, the removing party shall also file with the Clerk a separate notice, entitled "Notice of Pending Motions," specifying any pending motions that require action by a Judge of this Court and attaching a true and complete copy of each such motion and all supporting and opposition papers.

The removing party shall list in its certificate of service immediately below the name and address of counsel the name of the party or parties represented by said counsel and all parties appearing pro se.

NOTICE TO COUNSEL RE LOCAL RULE 5(a)

To ensure that our records are complete and to ensure that you receive notice of hearings and any court rulings, PLEASE FILE AN APPEARANCE with this office in accordance with Local Rule 5(a) of the Local Rules of Civil Procedure for the District of Connecticut.

NOTICE RE PLANNING CONFERENCE AND REPORT

Pursuant to Fed. R. Civ. P. 26 and Local Civil Rule 26(e) counsel and pro se parties must conduct a case management conference within 30 days of the appearance of the opposing party and must jointly file a planning conference report within 10 days thereafter using Form 26(f), which appears in the Appendix to the Local Rules.

Counsel for the removing defendant(s) is responsible for immediately serving a copy of this notice on all counsel of record and all unrepresented parties at their last known address.

KEVIN F. ROWE
CLERK OF COURT

UNITED STATES DISTRICT COURT

District of Connecticut

Governor, M. Jodi Rell, in her official capacity as Governor of the State of Connecticut, the State of Connecticut, Christopher J. Dodd and Joseph I. Lieberman in thier official capacities as United States Senators and John B. Larson in his official capacity as United States Representative,
V.

SUMMONS IN A CIVIL CASE

Donald Rumsfeld, in his official capacity as Secretary of Defense, The Defense Base Closure and Realignment Commission, and Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission, and James H. Bilbray, Phillip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, in their official capacities as members of the Defense Base Closure and Realignment Commission,
Defendants

CASE NUMBER: #

305CV1383

AVC

TO: (Name and address of Defendant)

Sue E. Turner
Member
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

ATTEST:
A TRUE COPY

Nancy F. Marino
NANCY F. MARINO
CONNECTICUT MARSHAL
HARTFORD COUNTY

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEVIN E. ROWE

CLERK

M. Sothel
DEPUTY CLERK

DATE

August 29, 2005

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CT 06510
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NOTICE TO COUNSEL AND PRO SE PARTIES

THE ATTACHED CASE HAS BEEN ASSIGNED TO JUDGE ALFRED V. COVELLO WHO SITS IN HARTFORD. COUNSEL AND PRO SE PARTIES SHOULD FILE ALL FUTURE PLEADINGS OR DOCUMENTS IN THIS MATTER WITH THE CLERK'S OFFICE IN HARTFORD. ANY ATTEMPT TO FILE PLEADINGS OR OTHER DOCUMENTS RELATED TO THIS ACTION IN ANY OF THE OTHER SEATS OF COURT WILL RESULT IN THOSE PLEADINGS OR DOCUMENTS BEING REFUSED AT THE COURT OR BEING RETURNED TO YOUR OFFICE. SEE D.CONN. L. CIV. R. 3(a).

COUNSEL AND PRO SE PARTIES ARE REQUIRED TO BECOME FAMILIAR WITH AND ABIDE BY THE FEDERAL RULES OF CIVIL PROCEDURE, THE LOCAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT OF CONNECTICUT AND STANDING ORDERS REGARDING SCHEDULING IN CIVIL CASES AND THE FILING OF TRIAL MEMORANDA.

COUNSEL AND PRO SE PARTIES ARE HEREBY NOTIFIED THAT FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION, WITHIN 21 DAYS AFTER THE MOTION IS FILED, MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION. FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION TO DISMISS WITHIN 21 DAYS AFTER THE MOTION IS FILED MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION, EXCEPT WHERE THE PLEADINGS PROVIDE SUFFICIENT GROUNDS TO DENY THE MOTION. SEE D.CONN. L. CIV. R. 7(a)1

COUNSEL AND PRO SE PARTIES ARE FURTHER NOTIFIED THAT THEY ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATING TO MOTIONS FOR SUMMARY JUDGMENT AS SET FORTH IN FED. R. CIV. P. 56 AND D.CONN. L. CIV. R. 56. A PARTY MAY MOVE FOR SUMMARY JUDGMENT WHEN THAT PARTY BELIEVES THERE IS NO GENUINE ISSUE OF MATERIAL FACT REQUIRING TRIAL AND THE PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. THE MOTION MAY BE DIRECTED TOWARD ALL OR PART OF A CLAIM OR DEFENSE AND IT MAY BE MADE ON THE BASIS OF THE PLEADINGS OR OTHER PORTIONS OF THE RECORD IN THE CASE OR IT MAY BE SUPPORTED BY AFFIDAVITS AND OTHER MATERIALS OUTSIDE THE PLEADINGS.

WHEN A PARTY SEEKING SUMMARY JUDGMENT (THE "MOVING PARTY") FILES A SUPPORTING AFFIDAVIT, THE PARTY OPPOSING SUMMARY JUDGMENT MUST FILE AN AFFIDAVIT, OR OTHER DOCUMENTARY EVIDENCE, CONTRADICTING THE MOVING PARTY'S SUBMISSIONS TO DEMONSTRATE THAT THERE ARE FACTUAL ISSUES REQUIRING A TRIAL. FACTS ASSERTED IN THE AFFIDAVIT(S) OF THE MOVING PARTY WILL BE TAKEN AS TRUE IF NOT CONTROVERTED BY COUNTER-AFFIDAVITS OR OTHER DOCUMENTARY EVIDENCE.

LOCAL CIVIL RULE 56(a) REQUIRES THE PARTY SEEKING SUMMARY JUDGMENT TO FILE A DOCUMENT ENTITLED "LOCAL RULE 56(a)1 STATEMENT," WHICH SETS FORTH IN SEPARATELY NUMBERED PARAGRAPHS A CONCISE STATEMENT OF EACH MATERIAL FACT AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED. THE MATERIAL FACTS SET FORTH IN THIS STATEMENT SHALL BE DEEMED ADMITTED UNLESS CONTROVERTED BY THE "LOCAL RULE 56(a)2 STATEMENT" REQUIRED TO BE SERVED BY THE OPPOSING PARTY. THE PARAGRAPHS IN THE 56(a)2 STATEMENT SHALL CORRESPOND TO THE PARAGRAPHS IN THE 56(a)1 STATEMENT AND SHALL STATE WHETHER THE FACTS ASSERTED BY THE MOVING PARTY ARE ADMITTED OR DENIED. THE LOCAL RULE 56(a)2 STATEMENT MUST ALSO INCLUDE IN A SEPARATE SECTION A LIST OF EACH ISSUE OF MATERIAL FACT AS TO WHICH IT IS CONTENDED THERE IS A GENUINE ISSUE TO BE TRIED.

COUNSEL AND PRO SE PARTIES ARE ALERTED TO THE REQUIREMENTS OF FED. R. CIV. P. 26(f) AND LOCAL CIVIL RULE 26, WHICH REQUIRE THAT THE PARTIES CONDUCT A CASE MANAGEMENT PLANNING CONFERENCE AND PREPARE AND FILE A REPORT OF THE CONFERENCE ON FORM 26(f) WHICH APPEARS IN THE APPENDIX TO THE LOCAL RULES.

COUNSEL AND PRO SE PARTIES ARE FURTHER ADVISED THAT THEY MAY REQUEST A REFERRAL OF THEIR CASE TO A UNITED STATES MAGISTRATE JUDGE FOR DISPOSITION. SEE 28 U.S.C. 636 AND RULE 77.2 OF THE LOCAL RULES FOR UNITED STATES MAGISTRATE JUDGES.

KEVIN F. ROWE, CLERK

30501383-600

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

2005 AUG 29 P 1:06

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(e), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R. Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(e) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
Kevin F. Rowe, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 1/2/03)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ORDER RE: DISCLOSURE STATEMENT

ANY NONGOVERNMENTAL CORPORATE PARTY TO AN ACTION IN THIS COURT SHALL FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK. A PARTY SHALL FILE THE STATEMENT WITH ITS INITIAL PLEADING FILED IN THE COURT AND SHALL SUPPLEMENT THE STATEMENT WITHIN A REASONABLE TIME OF ANY CHANGE IN THE INFORMATION. COUNSEL SHALL APPEND A CERTIFICATE OF SERVICE TO THE STATEMENT IN COMPLIANCE WITH LOCAL RULE 5(b).

COUNSEL FOR PLAINTIFF OR REMOVING DEFENDANT SHALL BE RESPONSIBLE FOR SERVING A COPY OF THIS ORDER UPON ALL PARTIES TO THE ACTION.

BY ORDER OF THE COURT
KEVIN F. ROWE, CLERK

Revised 1/2/03

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE TO COUNSEL
FOR CASES REMOVED FROM SUPERIOR COURT

STANDING ORDER

All parties removing actions to this Court pursuant to 28 U.S.C. §1441 shall, no later than five (5) days after filing a notice of removal, file and serve a signed statement that sets forth the following information:

1. The date on which each defendant first received a copy of the summons and complaint in the state court action.
2. The date on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the dates set forth in item 1.
3. In diversity cases, whether any defendant who has been served is a citizen of Connecticut.
4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal has taken place at this time.
5. The name of any defendant served prior to the filing of the notice of removal who has not formally joined in the notice of removal and the reasons why any such defendant did not join in the notice of removal.

At the time a removal notice is filed with the Clerk of this Court, the removing party shall also file with the Clerk a separate notice, entitled "Notice of Pending Motions," specifying any pending motions that require action by a Judge of this Court and attaching a true and complete copy of each such motion and all supporting and opposition papers.

The removing party shall list in its certificate of service immediately below the name and address of counsel the name of the party or parties represented by said counsel and all parties appearing pro se.

NOTICE TO COUNSEL RE LOCAL RULE 5(a)

To ensure that our records are complete and to ensure that you receive notice of hearings and any court rulings, PLEASE FILE AN APPEARANCE with this office in accordance with Local Rule 5(a) of the Local Rules of Civil Procedure for the District of Connecticut.

NOTICE RE PLANNING CONFERENCE AND REPORT

Pursuant to Fed. R. Civ. P. 26 and Local Civil Rule 26(e) counsel and pro se parties must conduct a case management conference within 30 days of the appearance of the opposing party and must jointly file a planning conference report within 10 days thereafter using Form 26(f), which appears in the Appendix to the Local Rules.

Counsel for the removing defendant(s) is responsible for immediately serving a copy of this notice on all counsel of record and all unrepresented parties at their last known address.

KEVIN F. ROWE
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GOVERNOR M. JODI RELL, in her
official capacity as Governor of the
State of Connecticut, CHRISTOPHER
J. DODD, in his official capacity as
United States Senator, JOSEPH I.
LIEBERMAN in his official capacity as
United States Senator, JOHN B.
LARSON, in his official capacity as
United States Representative, and
STATE OF CONNECTICUT,
Plaintiffs,

v.

DONALD RUMSFELD,
in his official capacity as
Secretary of Defense,
THE DEFENSE BASE CLOSURE
AND REALIGNMENT COMMISSION,
and ANTHONY J. PRINCIPI, in his
official capacity as Chairman of the
the Defense Base Closure and
Realignment and Commission, and
JAMES H. BILBRAY, PHILIP COYLE,
HAROLD W. GEHMAN, JR.,
JAMES V. VINSON, JAMES T. HILL,
LLOYD W. NEWTON, SAMUEL K.
SKINNER, and SUE E. TURNER,
in their official capacities as members
of the Defense Base Closure and
Realignment Commission,
Defendants.

CIVIL ACTION NO.

305 CV 1368

2005 AUG 29 P 12:50

FILED

August 29, 2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff State of Connecticut has a fundamental, long-standing duty to ensure the security of its citizens, including through the maintenance of a state militia.

The State's right to maintain and direct its own militia is deeply rooted in both the U.S. Constitution and its State Constitution. See U.S. Constitution Article I, Section 8, clauses 15 & 16 and Connecticut Constitution, Article Fourth, sec. 8.

2. The National Guard system is the successor to the original state militias. The National Guard and Air National Guard are dual federal and state organizations, with dual enlistments, whereby the National Guard military personnel swear allegiance to both the federal and state governments, and are simultaneously enlisted or commissioned with both the state and federal governments.

3. The plaintiff, M. Jodi Rell, Governor of the State of Connecticut, is the "captain general of the militia of the state, except when called into the service of the United States." See Connecticut Constitution, Article Fourth, sec. 8. As "commander-in-chief" of both the National Guard and Air National Guard in Connecticut, Governor Rell directs the National Guard and Air National Guard unless the Guard units are called into active federal military service. See Conn. Gen. Stat. § 27-14.

4. Plaintiff Christopher J. Dodd is a duly elected United States Senator for the State of Connecticut.

5. Plaintiff Joseph I. Lieberman is a duly elected United States Senator for the State of Connecticut.

6. Plaintiff John B. Larson is a duly elected United States Representative for the First Congressional District of Connecticut. The First Congressional District encompasses the town of Windsor Locks, Connecticut, in which the Bradley Air National Guard Station is located.

7. A unit of the Connecticut National Guard or Air National Guard may not be relocated or withdrawn without the consent of Governor Rell. See 10 U.S.C. § 18238.

8. No change in the branch, organization, or allotment of a National Guard or Air National Guard unit located entirely within a state may be made without the approval of its governor. See 32 U.S.C. § 104.

9. Defendant Secretary Donald Rumsfeld (the "Secretary" or "Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense ("DOD"). Secretary Rumsfeld is sued in his official capacity.

10. The Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (the "BRAC Act"), sets forth the process by which military bases in the United States and its territories are identified for closure or realignment.

11. Pursuant to the BRAC Act, as amended, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the defendant Defense Base Closure and Realignment Commission (the "BRAC Commission").

12. Defendant Anthony J. Principi is the Chairman of the BRAC Commission. Chairman Principi is sued in his official capacity.

13. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

14. Secretary Rumsfeld is responsible for overseeing, directing and/or implementing the closure or realignment of military bases pursuant to the BRAC process.

15. On or about May 13, 2005, Secretary Rumsfeld transmitted the DOD Base Closure and Realignment Report ("DOD Report") to the BRAC Commission.

16. The DOD Report contains the DOD's recommendations to realign or close military installations within the United States and its territories.

17. The DOD Report recommends the realignment of the Connecticut 103rd Fighter Wing located at Bradley Air National Guard Station in Windsor Locks, Connecticut. In particular, the Secretary has recommended that "[t]he A-10s assigned to the 103d Fighter Wing will be distributed to the 104th Fighter Wing, Barnes Municipal Airport Air Guard Station, MA (nine aircraft) and retirement (six aircraft)," and realigning the flying unit into the Massachusetts Air Guard. See DOD Recommendations, Sec. 3 (Air Force) at 14.

18. On August 26, 2005, the BRAC Commission adopted and approved the DOD's recommendation to realign the 103rd Fighter Wing.

19. The decision to adopt the DOD's recommendation to realign the 103rd Fighter Wing is not subject to any further review by the BRAC Commission and becomes part of its final report and recommendations to be transmitted to the President of the United States by September 8, 2005.

20. Pursuant to the BRAC Act, the President of the United States must approve or disapprove the BRAC Commission's recommendations in their entirety. He

may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing.

21. In each of the four previous BRAC processes – occurring in 1988, 1991, 1993 and 1995 – the President approved the BRAC Commission's recommendations in their entirety.

22. The President has stated publicly that he will approve the BRAC Commission's recommendations in their entirety and forward them to Congress.

23. The deadline for the President to forward to the Congress his approval of the BRAC Commission's recommendations is September 23, 2005. Congress's authority is limited to disapproving the entire slate of closures and realignments. Congress may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing. If Congress does not affirmatively act to disapprove the recommendations in their entirety within 45 legislative days of their transmittal from the President, they become law. Thereafter, Secretary Rumsfeld would be responsible for implementing all final closure and realignment decisions.

24. Congress has never disapproved the President's base closure and realignment decisions.

25. The 103rd Fighter Wing is an operational flying National Guard Unit located entirely within the State of Connecticut and is not currently activated to federal service. Initially formed in 1917, the 103rd Fighter Wing, also known as the "Flying Yankees," is made up the 103rd Operations Group, 103rd Mission Support Group, 103rd Maintenance Group and the 103rd Medical Group. Within each group are squadrons

and flights that come together to make up the more than 900 men and women of the 103rd Fighter Wing.

26. Transferring and/or retiring all of the 103rd Fighter Wing's aircraft would eliminate Connecticut's only Air National Guard fighter squadron. Transfer of these aircraft out of Connecticut would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command.

27. According to published reports, the Secretary's and BRAC Commission's recommendations would leave Connecticut as one of only two states without a single Air National Guard aircraft assigned within its borders.

28. The elimination of Connecticut's only Air National Guard Fighter Wing would have an immediate negative affect on enlistment and reenlistment in the Air National Guard in Connecticut.

29. The 103rd Fighter Wing is one of the world's premier A-10 flying units. Its members have demonstrated their excellence during missions over Bosnia and Iraq, including in Operation Iraqi Freedom, Operation Southern Watch and Operation Deny Flight.

30. The 103rd Fighter Wing is not activated to federal service. Thus, the 103rd Fighter Wing is under the command of the Governor of Connecticut. Responding to state or community emergencies is co-equal, and in no way subordinate, to the 103rd Fighter wing's federal responsibilities.

31. The proposed realignment of the 103rd Fighter Wing is a change in the branch, organization or allotment of the unit.

32. The proposed realignment of the 103rd Fighter Wing is a relocation or withdrawal of a unit of the Air National Guard.

33. In recommending the realignment of the 103rd Fighter Wing, the BRAC Commission contravened the law and the legal advice of its own counsel. By memorandum dated July 14, 2005, legal counsel to the BRAC Commission correctly recognized that the BRAC Act did not authorize the DOD or its Secretary to change the organization of or withdraw or disband a National Guard unit unless the DOD obtained the consent of the governor where the unit was located. In particular, the BRAC Commission's staff's legal analysis, which was approved by its General Counsel, concluded that

[w]here the practical result of an Air Force Recommendation would be to withdraw, disband, or change the organization of an Air National Guard Unit, the Commission may not approve such a recommendation without the consent of the Governor Concerned.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 15.

34. The recommendations by the BRAC Commission and Secretary Rumsfeld to transfer and/or retire aircraft currently assigned to the Bradley Air Guard Unit are also unlawful in that they call for action beyond the Commission's authority as delineated by the BRAC Act. The BRAC Commission's legal staff concluded that:

The Base Closure Act does not grant the Commission the authority to change how a unit is equipped or organized. Recommendations that

serve primarily to transfer aircraft from one unit to another, to retire aircraft, or to address an imbalance in the active-reserve force mix are outside the authority granted by the Act. The Commission must act to remove such provisions from its recommendations.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 10.

35. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to change the branch, organization or allotment of the 103rd Fighter Wing, or any portion thereof.

36. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to relocate or withdraw the 103rd Fighter Wing or any portion thereof.

37. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to deactivate the 103rd Fighter Wing or any portion thereof.

38. In her letter of June 14, 2005, Governor Rell informed the Secretary that she does not consent to the realignment, relocation, withdrawal, deactivation or change in the branch, organization or allotment of the 103rd Fighter Wing.

JURISDICTION

39. This is a lawsuit for declaratory and injunctive relief based upon 10 U.S.C. § 18238 and 32 U.S.C. § 104.

40. Pursuant to 28 U.S.C. §§ 1331, 1346, 2201, and 2202, this Court has jurisdiction over the parties and claims in this lawsuit.

41. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

42. Pursuant to the process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of realignments and closures of military installations. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

43. The BRAC Commission voted on August 26, 2005 to accept the Secretary's recommendation with regard to the 103rd Fighter Wing. The BRAC Commission is preparing to transmit this and its other recommendations to the President on or before September 8, 2005.

44. By voting to eliminate the 103rd Fighter Wing and transmit this recommendation to the President, the BRAC Commission, Chairman Principi and the BRAC Commissioners have finally and completely fulfilled their responsibilities under the BRAC Act with respect to the 103rd Fighter Wing. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

45. The harm as detailed herein is neither speculative nor conjectural, but rather is already complete as the Governor's right to disapprove changes to the branch, organization or allotment of the 103rd Fighter Wing has been nullified by the Secretary's and BRAC Commission's recommendations.

46. Additional harm is imminent as neither the President nor Congress may remove the 103rd Fighter Wing from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. The President has stated publicly that he will accept the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them and the President must act by September 23, 2005.

IRREPARABLE HARM

47. Absent a preliminary injunction, the harm as alleged herein would be irreparable. In addition to nullifying the Governor's right to disapprove changes to the organization or allotment of Connecticut's Air National Guard, the Secretary's and BRAC Commission's recommendation would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command. The proposed elimination of Connecticut's only Air National Guard Fighter Wing would immediately and negatively affect

enlistments and reenlistments in Connecticut's Air National Guard. In addition, once the BRAC Commission transmits its recommendations to the President, the ability to obtain effective judicial relief is severely diminished or eliminated.

FIRST CAUSE OF ACTION
[Declaratory and Injunctive Relief]

48. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

49. Pursuant to 32 U.S.C. § 104, no change in the branch, organization or allotment of a National Guard Unit located entirely within a State may be made without the approval of that State's Governor.

50. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut.

51. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

52. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

53. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

SECOND CAUSE OF ACTION
[Declaratory and Injunctive Relief]

54. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

55. Pursuant to 10 U.S.C. § 18238, a unit of the National Guard or Air National Guard of the United States may not be relocated or withdrawn without the consent of the governor of the State in which the National Guard unit is located.

56. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut;

57. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

58. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

59. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

THIRD CAUSE OF ACTION
[Declaratory and Injunctive Relief]

60. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

61. The Secretary and the BRAC Commission have recommended that the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard be transferred or retired.

62. The BRAC Act does not grant the BRAC Commission the authority to change how a unit is equipped or organized.

63. Any recommendation by the BRAC Commission to transfer aircraft from one unit to another or to retire aircraft unlawfully exceeds its authority as granted and delineated by the BRAC Act.

64. The Plaintiffs request a Declaratory Judgment declaring that any recommendation by the BRAC Commission to transfer or retire aircraft assigned to the 103rd Fighter Wing of the Bradley is null and void.

65. The Plaintiffs request that the Court enjoin the defendants from recommending, mandating, directing, implementing, or controlling the transfer or

retirement of the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

66. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(1) Issue an order declaring that the realignment of the 103rd Fighter Wing of the Bradley Air National Guard as proposed by Secretary Rumsfeld and the BRAC Commission without the consent of the Governor of the State of Connecticut is prohibited by federal law;

(2) Issue an order declaring that portions of the DOD and BRAC Commission Reports that recommends realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void;

(3) Enjoin Defendant Rumsfeld and any other officer or employee of DOD from mandating, implementing, overseeing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports;

(4) Enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in


their final report and recommendations to be transmitted to the President on or before September 8, 2005.

(5) Award to the Plaintiffs, pursuant to 28 U.S.C. § 2412 and any other applicable statute, the costs, fees, and other expenses incurred in prosecuting this lawsuit; and

(6) Order such other and further relief as this Court may deem appropriate.

PLAINTIFFS,
M. JODI RELL, GOVERNOR OF
CONNECTICUT, CHRISTOPHER J.
DODD, JOSEPH I. LIEBERMAN, JOHN B.
LARSON, and
THE STATE OF CONNECTICUT

BY:



RICHARD BLUMENTHAL
ATTORNEY GENERAL
Federal Bar No. ct05924
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5020
Fax: (860) 808-5347

UNITED STATES DISTRICT COURT

District of Connecticut

Governor, M. Jodi Rell, in her official capacity as Governor of the State of Connecticut, the State of Connecticut, Christopher J. Dodd and Joseph I. Lieberman in their official capacities as United States Senators and John B. Larson in his official capacity as United States Representative,
V.

SUMMONS IN A CIVIL CASE

Donald Rumsfeld, in his official capacity as Secretary of Defense, The Defense Base Closure and Realignment Commission, and Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and Realignment Commission, and James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue E. Turner, in their official capacities as members of the Defense Base Closure and Realignment Commission,
Defendants

CASE NUMBER: #

2005CV1363

AVC

TO: (Name and address of Defendant)
James V. Vinson
Member
2005 Defense Base Closure and Realignment Commission
2521 S. Clark St., Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

ATTEST:
A TRUE COPY
Nancy F. Marino
NANCY F. MARINO
CONNECTICUT MARSHAL
HARTFORD COUNTY

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

KEVIN F. ROWE

CLERK

M. J. H. Rowe

DEPUTY CLERK

DATE

August 29, 2005

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CT 06510
(203) 773-2140

450 MAIN STREET
HARTFORD, CT 06103
(860) 240-3200

915 LAFAYETTE BLVD
BRIDGEPORT, CT 06604
(203) 579-5861

14 COTTAGE PLACE
WATERBURY, CT 06702
(203) 597-6311

NOTICE TO COUNSEL AND PRO SE PARTIES

THE ATTACHED CASE HAS BEEN ASSIGNED TO JUDGE ALFRED V. COVELLO WHO SITS IN HARTFORD. COUNSEL AND PRO SE PARTIES SHOULD FILE ALL FUTURE PLEADINGS OR DOCUMENTS IN THIS MATTER WITH THE CLERK'S OFFICE IN HARTFORD. ANY ATTEMPT TO FILE PLEADINGS OR OTHER DOCUMENTS RELATED TO THIS ACTION IN ANY OF THE OTHER SEATS OF COURT WILL RESULT IN THOSE PLEADINGS OR DOCUMENTS BEING REFUSED AT THE COURT OR BEING RETURNED TO YOUR OFFICE. SEE D.CONN. L. CIV. R. 3(a).

COUNSEL AND PRO SE PARTIES ARE REQUIRED TO BECOME FAMILIAR WITH AND ABIDE BY THE FEDERAL RULES OF CIVIL PROCEDURE, THE LOCAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT OF CONNECTICUT AND STANDING ORDERS REGARDING SCHEDULING IN CIVIL CASES AND THE FILING OF TRIAL MEMORANDA.

COUNSEL AND PRO SE PARTIES ARE HEREBY NOTIFIED THAT FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION, WITHIN 21 DAYS AFTER THE MOTION IS FILED, MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION. FAILURE TO FILE AND SERVE A MEMORANDUM IN OPPOSITION TO A MOTION TO DISMISS WITHIN 21 DAYS AFTER THE MOTION IS FILED MAY BE DEEMED SUFFICIENT CAUSE TO GRANT THE MOTION, EXCEPT WHERE THE PLEADINGS PROVIDE SUFFICIENT GROUNDS TO DENY THE MOTION. SEE D.CONN. L. CIV. R. 7(a)1

COUNSEL AND PRO SE PARTIES ARE FURTHER NOTIFIED THAT THEY ARE REQUIRED TO COMPLY WITH REQUIREMENTS RELATING TO MOTIONS FOR SUMMARY JUDGMENT AS SET FORTH IN FED. R. CIV. P. 56 AND D.CONN. L. CIV. R. 56. A PARTY MAY MOVE FOR SUMMARY JUDGMENT WHEN THAT PARTY BELIEVES THERE IS NO GENUINE ISSUE OF MATERIAL FACT REQUIRING TRIAL AND THE PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. THE MOTION MAY BE DIRECTED TOWARD ALL OR PART OF A CLAIM OR DEFENSE AND IT MAY BE MADE ON THE BASIS OF THE PLEADINGS OR OTHER PORTIONS OF THE RECORD IN THE CASE OR IT MAY BE SUPPORTED BY AFFIDAVITS AND OTHER MATERIALS OUTSIDE THE PLEADINGS.

WHEN A PARTY SEEKING SUMMARY JUDGMENT (THE "MOVING PARTY") FILES A SUPPORTING AFFIDAVIT, THE PARTY OPPOSING SUMMARY JUDGMENT MUST FILE AN AFFIDAVIT, OR OTHER DOCUMENTARY EVIDENCE, CONTRADICTING THE MOVING PARTY'S SUBMISSIONS TO DEMONSTRATE THAT THERE ARE FACTUAL ISSUES REQUIRING A TRIAL. FACTS ASSERTED IN THE AFFIDAVIT(S) OF THE MOVING PARTY WILL BE TAKEN AS TRUE IF NOT CONTROVERTED BY COUNTER-AFFIDAVITS OR OTHER DOCUMENTARY EVIDENCE.

LOCAL CIVIL RULE 56(a) REQUIRES THE PARTY SEEKING SUMMARY JUDGMENT TO FILE A DOCUMENT ENTITLED "LOCAL RULE 56(a)1 STATEMENT," WHICH SETS FORTH IN SEPARATELY NUMBERED PARAGRAPHS A CONCISE STATEMENT OF EACH MATERIAL FACT AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED. THE MATERIAL FACTS SET FORTH IN THIS STATEMENT SHALL BE DEEMED ADMITTED UNLESS CONTROVERTED BY THE "LOCAL RULE 56(a)2 STATEMENT" REQUIRED TO BE SERVED BY THE OPPOSING PARTY. THE PARAGRAPHS IN THE 56(a)2 STATEMENT SHALL CORRESPOND TO THE PARAGRAPHS IN THE 56(a)1 STATEMENT AND SHALL STATE WHETHER THE FACTS ASSERTED BY THE MOVING PARTY ARE ADMITTED OR DENIED. THE LOCAL RULE 56(a)2 STATEMENT MUST ALSO INCLUDE IN A SEPARATE SECTION A LIST OF EACH ISSUE OF MATERIAL FACT AS TO WHICH IT IS CONTENDED THERE IS A GENUINE ISSUE TO BE TRIED.

COUNSEL AND PRO SE PARTIES ARE ALERTED TO THE REQUIREMENTS OF FED. R. CIV. P. 26(f) AND LOCAL CIVIL RULE 26, WHICH REQUIRE THAT THE PARTIES CONDUCT A CASE MANAGEMENT PLANNING CONFERENCE AND PREPARE AND FILE A REPORT OF THE CONFERENCE ON FORM 26(f) WHICH APPEARS IN THE APPENDIX TO THE LOCAL RULES.

COUNSEL AND PRO SE PARTIES ARE FURTHER ADVISED THAT THEY MAY REQUEST A REFERRAL OF THEIR CASE TO A UNITED STATES MAGISTRATE JUDGE FOR DISPOSITION. SEE 28 U.S.C. 636 AND RULE 77.2 OF THE LOCAL RULES FOR UNITED STATES MAGISTRATE JUDGES.

KEVIN F. ROWE, CLERK

30501363-420

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

2005 AUG 29 P 1:06

ORDER ON PRETRIAL DEADLINES

Unless otherwise ordered by the Judge to whom this case is assigned, the parties shall adhere to the following deadlines:

(a) In accordance with Local Civil Rule 26(e), within thirty days of the appearance of a defendant, the parties shall confer for the purposes described in Fed. R. Civ. P. 26(f). Within ten days thereafter, the parties shall jointly file a report on Form 26(f), which appears in the Appendix to the Local Civil Rules.

(b) All motions relating to joinder of parties, claims or remedies, class certification, and amendment of the pleadings shall be filed within 60 days after filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District.

(c) All motions to dismiss based on the pleadings shall be filed within 90 days after the filing of the complaint, the filing of a petition for removal, or the transfer of an action from another District. The filing of a motion to dismiss shall not result in the stay of discovery or extend the time for completing discovery.

(d) Formal discovery pursuant to the Federal Rules of Civil Procedure may not commence until the parties have conferred as required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(e) but parties may commence formal discovery immediately thereafter without waiting entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b). Informal discovery by agreement of the parties is encouraged and may commence at anytime. Unless otherwise ordered, discovery shall be completed within 6 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer of an action from another District.

(e) Unless otherwise ordered, all motions for summary judgment shall be filed within 7 months after the filing of the complaint, the filing of a petition for removal, or the date of transfer from another District.

Unless specifically ordered by the Court, an extension of time to comply with any one of the time limits in this Order does not automatically extend the time to comply with subsequent time limits.

Counsel for plaintiff or removing defendant shall be responsible for serving a copy of this order on all parties to the action.

By Order of the Court
Kevin F. Rowe, Clerk

This Order is issued pursuant to the Standing Order on Scheduling In Civil Cases, which appears in the Appendix to the Local Civil Rules

(Rev. 1/2/03)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ORDER RE: DISCLOSURE STATEMENT

ANY NONGOVERNMENTAL CORPORATE PARTY TO AN ACTION IN THIS COURT SHALL FILE A STATEMENT IDENTIFYING ALL ITS PARENT CORPORATIONS AND LISTING ANY PUBLICLY HELD COMPANY THAT OWNS 10% OR MORE OF THE PARTY'S STOCK. A PARTY SHALL FILE THE STATEMENT WITH ITS INITIAL PLEADING FILED IN THE COURT AND SHALL SUPPLEMENT THE STATEMENT WITHIN A REASONABLE TIME OF ANY CHANGE IN THE INFORMATION. COUNSEL SHALL APPEND A CERTIFICATE OF SERVICE TO THE STATEMENT IN COMPLIANCE WITH LOCAL RULE 5(b).

COUNSEL FOR PLAINTIFF OR REMOVING DEFENDANT SHALL BE RESPONSIBLE FOR SERVING A COPY OF THIS ORDER UPON ALL PARTIES TO THE ACTION.

**BY ORDER OF THE COURT
KEVIN F. ROWE, CLERK**

Revised 1/2/03

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NOTICE TO COUNSEL
FOR CASES REMOVED FROM SUPERIOR COURT

STANDING ORDER

All parties removing actions to this Court pursuant to 28 U.S.C. §1441 shall, no later than five (5) days after filing a notice of removal, file and serve a signed statement that sets forth the following information:

1. The date on which each defendant first received a copy of the summons and complaint in the state court action.
2. The date on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the dates set forth in item 1.
3. In diversity cases, whether any defendant who has been served is a citizen of Connecticut.
4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal has taken place at this time.
5. The name of any defendant served prior to the filing of the notice of removal who has not formally joined in the notice of removal and the reasons why any such defendant did not join in the notice of removal.

At the time a removal notice is filed with the Clerk of this Court, the removing party shall also file with the Clerk a separate notice, entitled "Notice of Pending Motions," specifying any pending motions that require action by a Judge of this Court and attaching a true and complete copy of each such motion and all supporting and opposition papers.

The removing party shall list in its certificate of service immediately below the name and address of counsel the name of the party or parties represented by said counsel and all parties appearing pro se.

NOTICE TO COUNSEL RE LOCAL RULE 5(a)

To ensure that our records are complete and to ensure that you receive notice of hearings and any court rulings, PLEASE FILE AN APPEARANCE with this office in accordance with Local Rule 5(a) of the Local Rules of Civil Procedure for the District of Connecticut.

NOTICE RE PLANNING CONFERENCE AND REPORT

Pursuant to Fed. R. Civ. P. 26 and Local Civil Rule 26(e) counsel and pro se parties must conduct a case management conference within 30 days of the appearance of the opposing party and must jointly file a planning conference report within 10 days thereafter using Form 26(f), which appears in the Appendix to the Local Rules.

Counsel for the removing defendant(s) is responsible for immediately serving a copy of this notice on all counsel of record and all unrepresented parties at their last known address.

KEVIN F. ROWE
CLERK OF COURT

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GOVERNOR M. JODI RELL, in her : CIVIL ACTION NO.
official capacity as Governor of the :
State of Connecticut, CHRISTOPHER :
J. DODD, in his official capacity as :
United States Senator, JOSEPH I. :
LIEBERMAN in his official capacity as :
United States Senator, JOHN B. :
LARSON, in his official capacity as :
United States Representative, and :
STATE OF CONNECTICUT, :
Plaintiffs, :

v. :

DONALD RUMSFELD, :
in his official capacity as :
Secretary of Defense, :
THE DEFENSE BASE CLOSURE :
AND REALIGNMENT COMMISSION, :
and ANTHONY J. PRINCIPI, in his :
official capacity as Chairman of the :
the Defense Base Closure and :
Realignment and Commission, and :
JAMES H. BILBRAY, PHILIP COYLE, :
HAROLD W. GEHMAN, JR., :
JAMES V. VINSON, JAMES T. HILL, :
LLOYD W. NEWTON, SAMUEL K. :
SKINNER, and SUE E. TURNER, :
in their official capacities as members :
of the Defense Base Closure and :
Realignment Commission, :
Defendants. :

August 29, 2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff State of Connecticut has a fundamental, long-standing duty to ensure the security of its citizens, including through the maintenance of a state militia.

The State's right to maintain and direct its own militia is deeply rooted in both the U.S. Constitution and its State Constitution. [REDACTED] Article I, Section 8,

[REDACTED] Connecticut Constitution, Article Fourth, sec. 8.

2. The National Guard system is the successor to the original state militias. The National Guard and Air National Guard are dual federal and state organizations, with dual enlistments, whereby the [REDACTED] military personnel swear allegiance

to both the federal and state governments simultaneously, enlisted or commissioned with both the state and federal governments.

3. The plaintiff, M. Jodi Rell, Governor of the State of Connecticut, is the "captain general of the militia of the state, except when called into the service of the United States." See Connecticut Constitution, Article Fourth, sec. 8. As "commander-in-chief" of both the National Guard and Air National Guard in Connecticut, Governor Rell directs the National Guard and Air National Guard unless the Guard units are called into active federal military service. See Conn. Gen. Stat. § 27-14.

4. Plaintiff Christopher J. Dodd is a duly elected United States Senator for the State of Connecticut.

5. Plaintiff Joseph I. Lieberman is a duly elected United States Senator for the State of Connecticut.

6. Plaintiff John B. Larson is a duly elected United States Representative for the First Congressional District of Connecticut. The First Congressional District encompasses the town of [REDACTED] Connecticut, in which the Bradley Air National

Guard is located.

7. [REDACTED] be [REDACTED] without the consent of Governor Reil. See 10 U.S.C. § 16238.

8. [REDACTED] organization, or allotment of a National Guard or [REDACTED] within a state may be made without the approval [REDACTED] See 32 U.S.C. § 104.

9. Defendant Secretary Donald Rumsfeld (the "Secretary" or "Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense ("DOD"). Secretary Rumsfeld is sued in his official capacity.

10. The Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (the "BRAC Act"), sets forth the process by which military bases in the United States and its territories are identified for closure or realignment.

11. Pursuant to the BRAC Act, as amended, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the defendant Defense Base Closure and Realignment Commission (the "BRAC Commission").

12. Defendant Anthony J. Principi is the Chairman of the BRAC Commission. Chairman Principi is sued in his official capacity.

13. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

14. Secretary Rumsfeld is responsible for overseeing, directing and/or implementing the closure or realignment of military bases pursuant to the BRAC process.

15. On or about May 13, 2005, Secretary Rumsfeld transmitted the DOD Base Closure and Realignment Report ("DOD Report") to the BRAC Commission.

16. The DOD Report contains the DOD's recommendations to realign or close military installations within the United States and its territories.

17. [REDACTED] recommends the realignment of the 103rd Fighter Wing, located at [REDACTED] Air National Guard Station in Windsor Locks, Connecticut. In particular, the Secretary has recommended that "[t]he A-10s assigned to the 103rd Fighter Wing will be distributed to [REDACTED] 103rd Fighter Wing, Daniel Manning Airfield, [REDACTED] MA (nine aircraft) and [REDACTED] (six aircraft)," and realigning [REDACTED] Air Guard. See DOD Recommendations, sec. 3 (A) [REDACTED].

18. On August 26, 2005, the BRAC Commission adopted and approved the [REDACTED] recommendation to realign the 103rd Fighter Wing.

19. The decision to adopt the DOD's recommendation to realign the 103rd Fighter Wing [REDACTED] by the BRAC Commission, and becomes part of its final report and recommendations to be transmitted to the President of the United States [REDACTED].

20. Pursuant to the BRAC Act, the President of the United States must approve or disapprove the BRAC Commission's recommendations in their entirety. He

may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing.

21. In each of the four previous BRAC processes – occurring in 1988, 1991, 1993 and 1995 – the President approved the BRAC Commission's recommendations in their entirety.

22. The President has stated publicly that he will approve the BRAC Commission's recommendations in their entirety and forward them to Congress.

23. The deadline for the President to forward to the Congress his approval of the BRAC Commission's recommendations is September 23, 2005. Congress's authority is limited to disapproving the entire slate of closures and realignments.

[REDACTED] may not reject any individual recommendation, including the recommendation [REDACTED] g. If Congress does not affirmatively act to disapprove the recommendations in their entirety within 45 legislative days of their transmittal from the President, they become law. Thereafter, Secretary Rumsfeld would be responsible for implementing all final closure and realignment decisions.

24. Congress has never disapproved the President's base closure and realignment decisions.

25. [REDACTED]

[REDACTED] delivered to [REDACTED]

[REDACTED] 103rd Fighter Wing, also known as the Flying Yankees, is

[REDACTED] 103rd Operations Group, 103rd Mission Support Group, 103rd

[REDACTED] Group. Within each group are squadrons

and flights that come together to make up the more than 900 men and women of the 103rd Fighter Wing.

26. ~~Transferring and/or retiring all of the 103rd Fighter Wing's aircraft would eliminate Connecticut's only Air National Guard fighter squadron. Transfer of these aircraft out of Connecticut would leave the Governor of a vital homeland security asset, and the state's only Air National Guard aircraft assigned within its borders or under its command.~~

27. According to published reports, the Secretary's and BRAC Commission's recommendations would leave Connecticut as one of only two states without a single Air National Guard aircraft assigned within its borders.

28. The elimination of Connecticut's only Air National Guard Fighter Wing would have an immediate negative affect on enlistment and reenlistment in the Air National Guard in Connecticut.

29. ~~The 103rd Fighter Wing is one of the world's premier A-10 flying units.~~ Its members have demonstrated their excellence during missions over Bosnia and Iraq, including in Operation Iraqi Freedom, Operation Southern Watch and Operation Deny Flight.

30. ~~The 103rd Fighter Wing is a dual mission unit, with a federal mission and a state mission.~~ Thus, the 103rd ~~Fighter Wing is~~ under the command of the Governor of Connecticut. Responding to state or community emergencies is co-equal, and in no way subordinate, to the 103rd Fighter wing's federal responsibilities.

31. [REDACTED] of the 103rd Fighter Wing is a change in the
base [REDACTED]

32. The proposed realignment of the 103rd Fighter Wing is a relocation or withdrawal of a unit of the Air National Guard.

33. In recommending the realignment of the 103rd Fighter Wing, the BRAC Commission contravened the law and the legal advice of its own counsel. By memorandum dated July 14, 2005, legal counsel to the BRAC Commission correctly recognized that the BRAC Act did not authorize the DOD or its Secretary to change the organization of or withdraw or disband a National Guard unit unless the DOD obtained the consent of the governor where the unit was located. [REDACTED] BRAC Commission [REDACTED] legal [REDACTED] which was approved by its General Counsel, [REDACTED]

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendation [REDACTED].

34. The recommendations by the BRAC Commission and Secretary Rumsfeld to transfer and/or retire aircraft currently assigned to the Bradley Air Guard Unit are also unlawful in that they call for action beyond the Commission's authority as delineated by the BRAC Act. [REDACTED]

[REDACTED] the authority to [REDACTED] equipped or organized. [REDACTED] that [REDACTED]

JURISDICTION

39. This is a lawsuit for declaratory and injunctive relief based upon 10 U.S.C.

~~§ 104.~~

40. Pursuant to 28 U.S.C., §§ 1331, 1346, 2201, and 2202, this Court has jurisdiction over the parties and claims in this lawsuit.

41. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

42. Pursuant to the process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of realignments and closures of military installations. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

43. ~~The BRAC Commission voted on August 26, 2005 to accept the~~

~~recommendation to eliminate the 103rd Fighter Wing.~~ The BRAC Commission is preparing to transmit this and its other recommendations to the President on or before September 8, 2005.

44. By voting to eliminate the 103rd Fighter Wing and transmit this recommendation to the President, the BRAC Commission, Chairman Principi and the BRAC Commissioners have finally and completely fulfilled their responsibilities under the BRAC Act with respect to the 103rd Fighter Wing. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

[REDACTED]

...to the State Commission's recommendations in their annual

IRREPARABLE HARM

Organization: [REDACTED]

enlistments and reenlistments in Connecticut's Air National Guard. In addition, once the BRAC Commission transmits its recommendations to the President, the ability to obtain effective judicial relief is severely diminished or eliminated.

FIRST CAUSE OF ACTION
[Declaratory and Injunctive Relief]

48. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

49. Pursuant to 38 U.S.C. § 104, no change in the branch, organization or a National Guard Unit located entirely within a State may be made without the approval of that State's Governor.

50. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut.

51. The Plaintiffs request that the Court declare that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing in the Air National Guard are null and void.

52. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, implementing or directing the realignment of the 103rd Fighter Wing in the Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

53. The [REDACTED] request that the Court enjoin the BRAC Commission, [REDACTED], and the BRAC Commissioners from including the recommendation [REDACTED] 103rd Fighter Wing in their final report and recommendations to be [REDACTED] submitted to the President on or before September 8, 2005.

SECOND CAUSE OF ACTION
[Declaratory and Injunctive Relief]

54. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

55. [REDACTED] a unit of the National Guard or Air National Guard of the United States may not be relocated or withdrawn without the consent of the governor of the State in which the National Guard unit is located.

56. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut;

57. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

58. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

59. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

THIRD CAUSE OF ACTION
[Declaratory and Injunctive Relief]

60. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

61. The Secretary and the BRAC Commission have recommended that the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard be transferred or retired.

62. The BRAC Act does not grant the BRAC Commission the authority to change how a unit is equipped or organized.

63. A ~~recommendation by the BRAC Commission to transfer aircraft from one unit to another or to retire aircraft unlawfully exceeds its authority as granted and~~
~~is prohibited by the BRAC Act.~~

64. The Plaintiffs request a Declaratory Judgment declaring that any recommendation by the BRAC Commission to transfer or retire aircraft assigned to the 103rd Fighter Wing of the Bradley is null and void.

65. The Plaintiffs request that the Court enjoin the defendants from recommending, mandating, directing, implementing, or controlling the transfer or

retirement of the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

66. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(1) Issue an order declaring that the realignment of the 103rd Fighter Wing of the Bradley Air National Guard as proposed by Secretary Rumsfeld and the BRAC Commission without the consent of the Governor of the State of Connecticut is

[REDACTED]

(2) Issue an order declaring that portions of the DOD and BRAC Commission Reports that recommends realignment of the 103rd Fighter Wing of the Bradley Air National Guard is

[REDACTED]

(3) Enjoin Defendant [REDACTED] any other officer or employee of DOD from mandating, implementing, supervising or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports;

(4) Enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in


their final report and recommendations to be transmitted to the President on or before September 8, 2005.

(5) Award to the Plaintiffs, pursuant to 28 U.S.C. § 2412 and any other applicable statute, the costs, fees, and other expenses incurred in prosecuting this lawsuit; and

(6) Order such other and further relief as this Court may deem appropriate.

PLAINTIFFS,
M. JODI RELL, GOVERNOR OF
CONNECTICUT, CHRISTOPHER J.
DODD, JOSEPH I. LIEBERMAN, JOHN B.
LARSON, and
THE STATE OF CONNECTICUT

BY:



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